

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Docket Nos. 18-2012, 18-2225, 18-2249, 18-2253, 18-2281,
18-2332, 18-2416, 18-2417, 18-2418, 18-2419, 18-2422,
18-2650, 18-2651, 18-2661, 18-2724, and 19-1385

In re National Football League Players' Concussion Injury Litigation

**JOINT APPENDIX
Volume XII of XIII, Pages JA8141-JA9072**

On appeal from Orders of the United States District Court for
the Eastern District of Pennsylvania (Hon. Anita B. Brody),
in No. 2:14-md-02323-AB and MDL No. 2323

Tobias Barrington Wolff
3501 Sansom Street
Philadelphia, PA 19104
(215) 898-7471
Counsel for the Locks Law Firm

Gene Locks
Michael Leh
Locks Law Firm
The Curtis Center
601 Walnut Street, Suite 720 East
Philadelphia, PA 19106
(866) 562-5752

Additional counsel representing Appellants:

Steven F. Molo
Eric R. Nitz
Rayiner I. Hashem
MOLOLAMKEN LLP
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
(202) 556-2000
Counsel for the Faneca Objectors

Michele D. Hangley
William T. Hangley
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square
18th & Cherry Streets, 27th Floor
Philadelphia, Pa 19103
Counsel for the Faneca Objectors

John J. Pentz
19 Widow Rites Lane
Sudbury, MA 01776
(978) 261-5725
Counsel for the Miller Objectors

Edward W. Cochran
COCHRAN & COCHRAN
20030 Marchmont Road
Shaker Heights, OH 44122
(216) 751-5546
Counsel for the Miller Objectors

Michael L. McGlamry
POPE MCGLAMRY KILPATRICK
MORRISON & NORWOOD
3391 Peachtree Road, N.E., Suite 300
Atlanta, GA 30326
(404) 523-7706
Counsel for Pope McGlamry

Richard L. Coffman
THE COFFMAN LAW FIRM
505 Orleans Street, Suite 505
Beaumont, TX 77701
(409) 833-7700
Counsel for the Armstrong Objectors

Mitchell A. Toups
WELLER, GREEN, TOUPS &
TERRELL
2615 Calder Street, Suite 400
Beaumont, TX 77702
(409) 838-0101
Counsel for the Armstrong Objectors

Mike Warner
THE WARNER LAW FIRM
101 Southeast 11th Avenue, Suite 301
Amarillo, TX 79101
(806) 372-2595
Counsel for the Armstrong Objectors

Jason C. Webster
THE WEBSTER LAW FIRM
6200 Savoy, Suite 515
Houston, TX 77036
(713) 581-3900
Counsel for the Armstrong Objectors

Charles L. Becker
KLINE & SPECTER
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000
Counsel for the Aldridge Objectors

Lance H. Lubel
Adam Voyles
LUBEL VOYLES LLP
675 Bering Drive
Houston, TX 77057
(713) 284-5200
Counsel for the Aldridge Objectors

Mickey L. Washington
WASHINGTON &
ASSOCIATES, PLLC
2109 Wichita Street
Houston, TX 77004
(713) 225-1838
Counsel for the Aldridge Objectors

Gaetan J. Alfano
Kevin E. Raphael
Alexander M. Owens
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI
1818 Market Street
Philadelphia, PA 19103
(215) 320-6200
Counsel for Anapol Weiss, P.C.

Linda S. Mullenix
2305 Barton Creek Boulevard
Austin, Texas 78735
Counsel for Sean Considine

George W. Cochran
LAW OFFICE OF
GEORGE W. COCHRAN
1385 Russell Drive
Streetsboro, OH 44241
(330) 607-5600
Counsel for the Anderson Objectors

Craig R. Mitnick
MITNICK LAW OFFICE
35 Kings Highway East
Haddonfield, NJ 08033
(856) 427-9000
Counsel for Mitnick Law Office

J. Gordon Rudd, Jr.
Brian C. Gudmundson
Michael J. Laird
ZIMMERMAN REED LLP
1100 IDS Center, 80 S Eighth Street
Minneapolis, MN 55402
Counsel for Zimmerman Reed

Anthony Tarricone
KREINDLER & KREINDLER LLP
855 Boylston Street
Boston, MA 02116
(617) 424-9100
Counsel for Kreindler & Kreindler LLC

TABLE OF CONTENTS

	<u>Page</u>
Dkt. 9960, Aldridge Objectors' Notice of Appeal, filed May 3, 2018	JA1
Dkt. 10036, Aldridge Objectors' Notice of Appeal, filed June 1, 2018	JA6
Dkt. 10043, Objector Miller's Notice of Appeal, filed June 6, 2018	JA11
Dkt. 10044, Objector Anderson's Notice of Appeal, filed June 6, 2018	JA13
Dkt. 10075, Mitnick Law Office's Notice of Appeal, filed June 8, 2018	JA15
Dkt. 10079, Anapol Weiss, P.C.'s Notice of Appeal, filed June 15, 2018	JA17
Dkt. 10095, Kreindler & Kreindler, LLP's Notice of Appeal, filed June 22, 2018	JA19
Dkt. 10097, Faneca Objectors' Notice of Appeal, filed June 22, 2018	JA21
Dkt. 10099, Zimmerman Reed LLP's Notice of Appeal, filed June 22, 2018	JA24
Dkt. 10101, Armstrong Objectors' Notice of Appeal, filed June 25, 2018	JA27
Dkt. 10102, Pope McGlamry, P.C.'s Notice of Appeal, filed June 25, 2018	JA29
Dkt. 10133, Faneca Objectors' Amended Notice of Appeal, filed July 13, 2018	JA32
Dkt. 10142, Anapol Weiss, P.C.'s Notice of Appeal, filed July 17, 2018	JA35

Dkt. 10164, Aldridge Objectors’ Notice of Appeal, filed July 24, 2018.....	JA37
Dkt. 10166, Kreindler & Kreindler, LLP’s Notice of Appeal, filed July 25, 2018.....	JA40
Dkt. 10188, Class Counsel Locks Law Firm’s Notice of Appeal, filed Aug. 2, 2018	JA42
Dkt. 10428, Aldridge Objectors’ Notice of Appeal, filed Feb. 15, 2019	JA45
Dkt. 9860, Memorandum Opinion regarding: Total Amount of Common-Benefit Attorneys’ Fees, filed Apr. 5, 2018	JA48
Dkt. 9861, Order regarding: Total Amount of Common-Benefit Attorneys’ Fees, filed Apr. 5, 2018.....	JA68
Dkt. 9862 Memorandum Opinion regarding: IRPA Fee Cap, filed Apr. 5, 2018	JA70
Dkt. 9863, Order regarding: IRPA Fee Cap, filed Apr. 5, 2018.....	JA80
Dkt. 9876, Order regarding: Payments of Incentive Awards and Expenses, filed Apr. 12, 2018.....	JA82
Dkt. 10019, Explanation and Order regarding: Allocation of Common-Benefit Attorneys’ Fees, filed May 24, 2018	JA84
Dkt. 10042, Order regarding: Alexander Objectors’ Motion for Reconsideration/New Trial, filed June 5, 2018	JA111
Dkt. 10103, Order regarding: Payment of Attorneys’ Fees and Expenses, filed June 27, 2018.....	JA113
Dkt. 10104, Order regarding: Withholdings for Common Benefit Fund, filed June 27, 2018.....	JA115
Dkt. 10127, Order Denying Locks Law Firm’s Motion for Reconsideration of the Court’s Explanation and Order, filed July 10, 2018.....	JA117
Dkt. 10378, Explanation and Order, filed Jan. 16, 2019	JA118

Civil Docket for Case No.: 2:12-md-2323-AB (E.D. Pa.).....	JA127
Dkt. 4, Case Management Order No. 1, filed Mar. 6, 2012	JA693
Dkt. 52, Order Modifying Case Management Order No.1, filed Apr. 2, 2012	JA718
Dkt. 64, Case Management Order No. 2, filed Apr. 26, 2012.....	JA721
Dkt. 71, Transcript of Apr. 25, 2012 Organizational Courtroom Conference, filed May 10, 2012	JA726
Dkt. 72, Case Management Order No. 3, filed May 11, 2012.....	JA764
Dkt. 2583, Stipulation and Order regarding: Scheduling, filed July 16, 2012.....	JA767
Dkt. 2642, Plaintiffs' Amended Master Administrative Long-Form Complaint, filed July 17, 2012.....	JA773
Dkt. 3384, Order Denying Plaintiffs' Motion for Discovery, filed Aug. 21, 2012	JA863
Dkt. 3587, Order regarding: Appointment of Defendant's Co-Liaison Counsel, filed Aug. 29, 2012	JA864
Dkt. 3698, Plaintiffs' Uncontested Motion for Order Establishing a Time and Expense Reporting Protocol and Appointing Auditor, filed Sept. 7, 2012	JA865
Dkt. 3710, Order Granting Plaintiffs' Uncontested Motion for Order Establishing a Time and Expense Reporting Protocol, filed Sept. 11, 2012	JA948
Dkt. 4135, Order Granting Plaintiffs' Uncontested Motion for Extension of Deadline To File Initial Time Expense Reports, filed Oct. 31, 2012.....	JA960
Dkt. 4143, Order Granting Plaintiffs' Uncontested Motion for Additional Extension of Deadline To File Initial Time and Expense Reports, filed Nov. 8, 2012.....	JA961

Dkt. 5128, Order regarding: Appointment of a Mediator, filed July 8, 2013.....	JA962
Dkt. 5235, Order regarding: Proposed Settlement, filed Aug. 29, 2013	JA964
Dkt. 5634, Motion of Proposed Co-Lead Counsel for Preliminary Approval of the Class Settlement Agreement, filed Jan. 6, 2014.....	JA966
Dkt. 5634-2, Exhibit B, Class Action Settlement Agreement.....	JA1003
Dkt. 5657, Memorandum Opinion Denying Preliminary Approval, filed Jan. 14, 2014	JA1471
Dkt. 5658, Order Denying Preliminary Approval Without Prejudice, filed Jan. 14, 2014	JA1483
Dkt. 5910, Order regarding: Court’s Jan. 14, 2014 Order, filed Apr. 16, 2014	JA1484
Dkt. 5911, Stipulation and Order regarding: Apr. 15, 2014 Order, filed Apr. 16, 2014	JA1485
Dkt. 6019, Faneca Objectors’ Motion To Intervene filed May 5, 2014	JA1487
Dkt. 6019-1, Memorandum of Law in Support	JA1572
Dkt. 6073, Co-Lead Class Counsel’s Motion for Order Granting Preliminary Approval of Class Action Settlement, filed June 25, 2014.....	JA1639
Dkt. 6073-4, Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Preliminary Approval of Settlement, filed June 25, 2014	JA1929
Dkt. 6082, Response in Opposition to Motion for Approval of Class Action Settlement, filed July 2, 2014	JA2041
Dkt. 6083, Memorandum Opinion Granting Preliminary Approval, filed July 7, 2014.....	JA2160
Dkt. 6084, Order Granting Preliminary Approval, filed July 7, 2014.....	JA2121

Dkt. 6087, Class Action Settlement Agreement as of June 25, 2014, filed July 7, 2014.....	JA2151
Dkt. 6107, Order Denying Faneca Objectors’ Motion To Intervene, filed July 29, 2014.....	JA2313
Dkt. 6109, Faneca Objectors’ Reply in Further Support of Motion To Intervene, filed July 29, 2014	JA2314
Dkt. 6126, Response in Opposition regarding: Plaintiffs’ Motion for Extension of Time To File Response/Reply to Motion To Permit Access to Medical, Actuarial, and Economic Information, filed Aug. 8, 2014.....	JA2330
Dkt. 6160, Order Directing Special Master To File Actuarial Reports and Supplemental Information or Tabulations, filed Sept. 8, 2014	JA2333
Dkt. 6166, Order Denying Petition of Objecting Class Members for Leave to Appeal District Court’s Order Granting Settlement, filed Sept. 11, 2014	JA2334
Dkt. 6167, NFL Concussion Liability Forecast, filed Sept. 12, 2014	JA2336
Dkt. 6167-1, Exhibit A, Supplemental Schedules	JA2407
Dkt. 6167-2, Exhibit B, Supplemental Schedules	JA2409
Dkt. 6167-3, Exhibit C, Supplemental Schedules	JA2411
Dkt. 6167-4, Exhibit D, Supplemental Schedules	JA2466
Dkt. 6168, Report of the Segal Group to Special Master Perry Golkin, filed Sept. 12, 2014	JA2468
Dkt. 6168-1, Exhibit A, Part 1, Player Database	JA2522
Dkt. 6168-2, Exhibit A, Part 2, Player Database	JA2677
Dkt. 6168-3, Exhibit B, Plaintiff’s Sample Data	JA2809
Dkt. 6168-4, Exhibit C, Screenshot of Plaintiff’s Database	JA2879

Dkt. 6168-5, Exhibit D, Screenshot of Model Assumptions as Entered into Model	JA2881
Dkt. 6168-6, Exhibit E, Cash Flow Analysis	JA2884
Dkt. 6168-7, Exhibit F, Supplemental Schedules.....	JA2889
Dkt. 6169, Faneca Objectors' Motion for Discovery, filed Sept. 13, 2014	JA2960
Dkt. 6169-1, Memorandum of Law in Support of Motion for Limited Discovery.....	JA2963
Dkt. 6169-2, Exhibit A, Limited Discovery Requests.....	JA2977
Dkt. 6169-3, Exhibit B, Information on NFL Football Concussions	JA2996
Dkt. 6201, Faneca Objectors' Objections, filed Oct. 14, 2014.....	JA3003
Dkt. 6201-1, Declaration of Eric R. Nitz, filed Oct. 6, 2014.....	JA3128
Dkt. 6201-2, Exhibits 1-5	JA3143
Dkt. 6201-3, Exhibits 6-8	JA3184
Dkt. 6201-4, Exhibits 9-12	JA3214
Dkt. 6201-5, Exhibits 13-15	JA3286
Dkt. 6201-6, Exhibits 16-25	JA3385
Dkt. 6201-7, Exhibits 26-30	JA3405
Dkt. 6201-8, Exhibits 31-36	JA3434
Dkt. 6201-9, Exhibits 37-44	JA3463
Dkt. 6201-10, Exhibits 45-51	JA3492
Dkt. 6201-11, Exhibits 52-59	JA3571
Dkt. 6201-12, Exhibits 60-66	JA3752
Dkt. 6201-13, Exhibits 67-71	JA3752

Dkt. 6201-14, Exhibits 72-76	JA3776
Dkt. 6201-15, Exhibits 77-82	JA3819
Dkt. 6201-16, Declaration of Robert A. Stern, filed Oct. 6, 2014.....	JA3858
Dkt. 6201-17, Declaration of Sean Morey, filed Oct. 6, 2014	JA3919
Dkt. 6211, Faneca Objectors’ Motion for Leave To File a Reply in Support of Motion for Leave To Conduct Limited Discovery, filed Oct. 13, 2014.....	JA3923
Dkt. 6211-1, Memorandum of Law in Support of Movants’ Motion for Leave To File	JA3926
Dkt. 6232, Faneca Objectors’ Supplemental Objections, filed Oct. 14, 2014.....	JA3928
Dkt. 6232-1, Declaration of Sam Gandy and Exhibits	JA3933
Dkt. 6233, Armstrong Objectors’ Amended Objection to the June 25, 2014 Class Action Settlement Agreement, filed Oct. 14, 2014	JA3971
Dkt. 6233-1, Declaration of Drs. Brent E. Masel and Gregory J. O’Shanick in Support of BIAA’s Motion for Leave to File <i>Amicus Curiae</i> Brief	JA4037
Dkt. 6233-2, Declaration of Richard L. Coffman.....	JA4049
Dkt. 6233-3, Declaration of Mitchell Toups	JA4051
Dkt. 6233-4, Declaration of Jason Webster.....	JA4053
Dkt. 6237, Aldridge Objectors’ Objections to June 25, 2014 Class Action Settlement Agreement, filed Oct. 14, 2014.....	JA4055
Dkt. 6244, Faneca Objectors’ Motion To Set Scheduling Conference Before Nov. 19, 2014, filed Oct. 15, 2014.....	JA4066
Dkt. 6252, Faneca Objectors’ Motion for Production of Evidence, filed Oct. 21, 2014.....	JA4073

Dkt. 6339, Faneca Objectors’ Notice regarding: Intent To Appear at Fairness Hearing, filed Nov. 3, 2014	JA4078
Dkt. 6344, Order that Steven Molo Will Coordinate the Arguments of the Objectors at the Fairness Hearing, filed Nov. 4, 2014	JA4111-1
Dkt. 6353, Letter from Mitchell A. Toups to Judge Brody dated Sept. 3, 2014 regarding: Objection to June 25, 2014 Class Action Settlement by Armstrong Objectors, filed Nov. 3, 2014	JA4112
Dkt. 6420, Faneca Objectors’ Supplemental Objections., filed Nov. 11, 2014	JA4144
Dkt. 6423-5, Declaration of Orran L. Brown, Sr., filed Nov. 12, 2014	JA4157
Dkt. 6423-6, Supplemental Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Final Approval of Settlement and Certification Class and Subclasses, filed November 12, 2014	JA4236
Dkt. 6423-17, Declaration of Kenneth C. Fischer, M.D., filed Nov. 12, 2014	JA4249
Dkt. 6423-18, Declaration of Christopher C. Giza, M.D., filed Nov. 12, 2014	JA4267
Dkt. 6423-19, Declaration of David Allen Hovda, Ph.D., filed Nov. 12, 2014	JA4316
Dkt. 6423-20, Declaration of John G. Keilp, Ph.D., filed Nov. 12, 2014	JA4405
Dkt. 6423-21, Declaration of Thomas Vasquez, Ph.D., filed Nov. 12, 2014	JA4452
Dkt. 6425, Faneca Objectors’ Statement regarding: Fairness Hearing, filed Nov. 14, 2014	JA4539
Dkt. 6428, Notice of Counsel Permitted To Speak at Fairness Hearing, filed Nov. 17, 2014	JA4542

Dkt. 6434, Faneca Objectors’ Objections, filed Nov. 18, 2014	JA4544
Dkt. 6435, Faneca Objectors’ Statement regarding: Nov. 19, 2014 Fairness Hearing, filed Nov. 18, 2014	JA4550
Dkt. 6455, Post-Fairness Hearing Supplemental Briefing of Objectors regarding: Faneca Objectors’ Motion for Final Order and Judgment, filed Dec. 2, 2014	JA4551
Dkt. 6455-1, Supplemental Declaration of Robert Stern, filed Dec. 2, 2014	JA4591
Dkt. 6455-2, Supplemental Declaration of Sam Gandy and Exhibits, filed Dec. 2, 2014	JA4598
Dkt. 6455-3, Declaration of Patrick Hof and Exhibit, filed Dec. 2, 2014	JA4647
Dkt. 6455-4, Declaration of Jing Zhang and Exhibit, filed Dec. 2, 2014	JA4769
Dkt. 6455-5, Declaration of Martha Shenton and Exhibit, filed Dec. 2, 2014	JA4792
Dkt. 6455-6, Declaration of Charles Bernick and Exhibit, filed Dec. 2, 2014	JA4926
Dkt. 6455-7, Declaration of Michael Weiner and Exhibit, filed Dec. 2, 2014	JA4940
Dkt. 6455-8, Declaration of James Stone and Exhibit, filed Dec. 2, 2014	JA5099
Dkt. 6455-9, Declaration of Thomas Wisniewski and Exhibit, filed Dec. 2, 2014	JA5125
Dkt. 6455-10, Declaration of Steven T. DeKosky and Exhibit, filed Dec. 2, 2014	JA5176
Dkt. 6455-11, Declaration of Wayne Gordon and Exhibit, filed Dec. 2, 2014	JA5230

Dkt. 6455-12, Supplemental Declaration of Eric Nitz, filed Dec. 2, 2014	JA5270
Dkt. 6455-13, Exhibits 1-9	JA5275
Dkt. 6455-14, Exhibits 10-18	JA5365
Dkt. 6455-23, Exhibits 20-27	JA5457
Dkt. 6461, Faneca Objectors’ Motion for Disclosure of Documents Relevant to Fairness of Settlement, filed Dec. 9, 2014	JA5508
Dkt. 6462, Faneca Objectors’ Motion for Disclosure of Financial Relationships with Experts, filed Dec. 9, 2014.....	JA5515
Dkt. 6463, Amended Transcript of Nov. 19, 2014 Fairness Hearing, filed Dec. 11, 2014.....	JA5522
Dkt. 6469, Faneca Objectors’ Notice regarding: Fairness Hearing Slides, filed Dec. 22, 2014	JA5774
Dkt. 6470, Faneca Objectors’ Notice regarding: Supplemental Authority, filed Dec. 23, 2014	JA5814
Dkt. 6470-1, Memorandum Opinion and Order	JA5818
Dkt. 6479, Order Directing Settling Parties To Address Certain Issues by Feb. 13, 2015, filed Feb. 2, 2015	JA5839
Dkt. 6481, Class Counsel and the NFL Parties’ Joint Submission regarding: Feb. 2, 2015 Order, filed Feb. 13, 2015	JA5842
Dkt. 6481-1, Exhibit A, Class Action Settlement Agreement (As Amended).....	JA5853
Dkt. 6481-2, Exhibit B, Redline Class Action Settlement Agreement (As Amended)	JA6015
Dkt. 6503, Armstrong Objectors’ Supplemental Objection to the Amended Class Action Settlement, filed Apr. 13, 2015.....	JA6124
Dkt. 6508, Order Ruling on Various Motions, filed Apr. 21, 2015	JA6129

Dkt. 6509, Memorandum Opinion regarding: Final Approval of Amended Settlement, filed Apr. 22, 2015	JA6131
Dkt. 6510, Final Order and Judgment regarding: Final Settlement Approval, filed Apr. 22, 2015	JA6263
Dkt. 6534, Amended Final Order and Judgment, filed May 8, 2015	JA6270
Dkt. 6535, Order regarding: Amended Final Order, filed May 11, 2015	JA6278
Dkt. 7070, Faneca Objectors’ Petition for an Award of Attorneys’ Fees, filed Jan. 11, 2017.....	JA6280
Dkt. 7070-1, Memorandum of Law in Support, filed Jan. 11, 2017	JA6283
Dkt. 7070-2, Declaration of Steven Molo, filed Jan. 11, 2017	JA6338
Dkt. 7151, Co-Lead Class Counsel’s Petition for an Award of Attorneys’ Fees, filed Feb. 13, 2017	JA6555
Dkt. 7151-1, Memorandum of Law in Support, filed Feb. 13, 2017	JA6558
Dkt. 7151-2, Declaration of Christopher Seeger, filed Feb. 13, 2017	JA6640
Dkt. 7151-6, Declaration of Levin Sedran & Berman, filed Feb. 13, 2017	JA6723-1
Dkt. 7151-7, Declaration of Gene Locks, filed Feb. 13, 2017	JA6724
Dkt. 7151-8, Declaration of Steven C. Marks, filed Feb. 13, 2017	JA6755
Dkt. 7151-10, Declaration of Sol H. Weiss, filed Feb. 13, 2017.....	JA6785
Dkt. 7151-18, Exhibit O, Declaration of Samuel Issacharoff, filed Feb. 13, 2017	JA6814

Dkt. 7151-27, Exhibit X, Declaration of Charles Zimmerman, filed Feb. 13, 2017	JA6849
Dkt. 7151-28, Exhibit Y, Brian T. Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Awards</i> , JOURNAL OF EMPIRICAL LEGAL STUDIES (Dec. 2010), filed Feb. 13, 2017	JA6883
Dkt. 7161, Miller Objector’s Opposition to Co-Lead Class Counsel’s Fee Petition, filed Feb. 17, 2017	JA6920
Dkt. 7176, Alexander Objectors’ Motion for Entry of Case Management Order Governing Applications for Attorney Fees, filed Feb. 21, 2017	JA6933
Dkt. 7228, Co-Lead Class Counsel’s Motion for Extension of Time To File Response/Reply Memorandum in Support of Their Fee Petition and To Set Coordinated Briefing Schedule, filed Feb. 28, 2017.....	JA6943
Dkt. 7229, Objector Miller’s Response in Opposition to Fee Applications and Co-Lead Class Counsel’s Motion To Set Coordinated Briefing Schedule, filed Mar. 1, 2017.....	JA6948
Dkt. 7230, Armstrong Objectors’ Petition for an Award of Attorneys’ Fees, filed Mar. 1, 2017	JA6951
Dkt. 7231, Objector Miller’s Corrected Response in Opposition to Fee Applications and Co-Lead Class Counsel’s Motion To Set Coordinated Briefing Schedule, filed Mar. 1, 2017.....	JA6954
Dkt. 7232, Armstrong Objectors’ Memorandum of Law in Support of Petition for an Award of Attorneys’ Fees, filed Mar. 1, 2017.....	JA6957
Dkt. 7232-1, Exhibit A, Declaration of Richard L. Coffman in Support of the Armstrong Objectors’ Petition for Award of Attorneys’ Fees	JA6992
Dkt. 7232-2, Exhibit B, Declaration of Mitchell A. Toups in Support of the Armstrong Objectors’ Petition for Award of Attorneys’ Fees.....	JA6998

Dkt. 7232-3, Exhibit C, Declaration of the Webster Law Firm in Support of the Armstrong Objectors’ Petition for an Award of Attorneys’ Fees	JA7007
Dkt. 7232-4, Exhibit D, Declaration of the Warner Law Firm in Support of the Armstrong Objectors’ Petition for an Award of Attorneys’ Fees	JA7009
Dkt. 7233, Faneca Objectors’ Response to Motion regarding: Co-Lead Class Counsel’s Motion for Extension of Time, filed Mar 1, 2017	JA7014
Dkt. 7237, Anderson Objector’s Supplemental Objection to Faneca Objector’s to Fee Petition, filed Mar. 1, 2017	JA7017
Dkt. 7238, Order Granting Co-Lead Class Counsel’s Motion for Extension of Time, filed Mar. 2, 2017	JA7022
Dkt. 7259, Stipulation and Proposed Order by NFL, Inc., NFL Properties LLC, Plaintiff(s), filed Mar. 8, 2017	JA7023
Dkt. 7261, Order regarding: Co-Lead Class Counsel’s Fee Petition, filed Mar. 8, 2017	JA7026
Dkt. 7324, Order Considering the Uncontested Motion of Co-Lead Class Counsel for Order in Aid of Implementation of the Settlement Program, filed Mar. 23, 2017	JA7028
Dkt. 7344, Memorandum in Opposition to Co-Lead Class Counsel’s Petition for an Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7036
Dkt. 7346, Memorandum in Opposition to Co-Lead Class Counsel’s Petition for an Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7046
Dkt. 7350, Response Objection and Memorandum in Opposition to Co-Lead Counsel’s Petition for an Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7059
Dkt. 7354, Aldridge Objectors’ Objections regarding: Co-Lead Class Counsel’s Application for an Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7073

Dkt. 7355, Aldridge Objectors’ Objections regarding: Co-Lead Class Counsel’s Application for an Award of Attorneys’ Fees, filed Mar. 27, 2017.....	JA7076
Dkt. 7356, Certain Plaintiffs’ Response in Opposition to Petition for Adoption of Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, filed Mar. 27, 2017	JA7145
Dkt. 7360, Objection by Plaintiff(s) to Request for Attorneys’ Fees and Holdback, filed Mar. 27, 2017	JA7150
Dkt. 7363, Notice of Joinder in Estate of Kevin Turner’s Response and Limited Opposition to Co-Lead Counsel’s Petition for an Award of Attorneys’ Fees, filed Mar. 27, 2017.....	JA7160
Dkt. 7364, Application/Petition of Objectors Preston and Katherine Jones for Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7167
Dkt. 7366, Faneca Objectors’ Preliminary Response in Support regarding: Petition for an Award of Attorney Fees and in Response to Dkts. 7151, 7161, 7230 and 7237, filed Mar. 27, 2017	JA7170
Dkt. 7366-1, Exhibit A, Declaration of Joseph Floyd.....	JA7188
Dkt. 7366-2, Exhibit B, Armstrong Objectors’ Memorandum of Law.....	JA7223
Dkt. 7366-3, Exhibit C, Revised Summary of Expenses	JA7259
Dkt. 7367, Plaintiffs’ Joinder to Objections regarding: Co-Lead Counsel’s Petition for an Award of Attorneys’ Fees, filed Mar. 27, 2017	JA7261
Dkt. 7370, Anderson Objector’s Second Supplemental Notice of Fee Objections, filed Mar. 27, 2017	JA7264
Dkt. 7373, Plaintiffs’ Objections to Co-Lead Class Counsel’s Request for Five Percent Set Aside, filed Mar. 27, 2017	JA7269
Dkt. 7375, Plaintiffs’ Notice of Joinder in Objections to Co-Lead Class Counsel’s Petition for Fees, Reimbursements, and Adoption of Set-Aside Award, filed Mar. 28, 2017.....	JA7275

Dkt. 7403, Order Granting Deandra Cobb’s Motion To Accept Objection to Five Percent Set-Aside File, filed Mar. 29, 2017	JA7277
Dkt. 7404, Plaintiffs’ Response Objection regarding: Co-Lead Class Counsel’s Petition for Five Percent Set-Aside, filed Mar. 29, 2017	JA7278
Dkt. 7409, Plaintiffs’ Motion for Extension of Time To File Answer, filed Mar. 29, 2017.....	JA7287
Dkt. 7446, Order That Pursuant to Federal Rules of Civil Procedure 72b Referring All Petitions for Individual Attorney' Liens, filed Apr. 4, 2017	JA7289
Dkt. 7453, Order Granting Motion To Accept Joinder in Objections to Co-Lead Class Counsel’s Petition for Fees, filed Apr. 6, 2017	JA7290
Dkt. 7463, Response in Opposition regarding: Motion for Joinder, filed Apr. 10, 2017	JA7291
Dkt. 7464, Co-Lead Class Counsel’s Memorandum in Support regarding: Fee Petition, filed Apr. 10, 2017	JA7308
Dkt. 7464-1, Supplemental Seeger Declaration, filed Apr. 10, 2017	JA7385
Dkt. 7464-2, Exhibit Z, Declaration of Bradford R. Sohn	JA7396
Dkt. 7464-3, Exhibit AA, Petition to Appeal	JA7404
Dkt. 7464-4, Exhibit BB, Reply in Support	JA7437
Dkt. 7464-5, Exhibit CC, Corrected Opening Brief.....	JA7456
Dkt. 7464-6, Exhibit DD, Appellants’ Reply Brief.....	JA7529
Dkt. 7464-7, Exhibit EE, Class Opposition to Motion for Judicial Notice.....	JA7558
Dkt. 7464-8, Exhibit FF, Appellants’ Opposition to Motion to Expedite Appeals	JA7570
Dkt. 7464-9, Exhibit GG, Petition for a Writ of Certiorari	JA7574
Dkt. 7464-10, Exhibit HH, Petitioner’s Reply Brief.....	JA7615

Dkt. 7464-11, Exhibit II, U.S. Supreme Court Docket for <i>Armstrong v. NFL</i>	JA7630
Dkt. 7464-12, Exhibit JJ, An Updated Analysis of the NFL Concussion Settlement.....	JA7635
Dkt 7464-13, Exhibit KK, Declaration of Orran. L. Brown, Sr.....	JA7733
Dkt. 7533, Aldridge Objectors’ Objections regarding: Co-Lead Class Counsel’s Omnibus Reply, filed Apr. 21, 2017.....	JA7738
Dkt. 7534, Aldridge Objectors’ Motion for Leave To Serve Fee- Petition Discovery, filed Apr. 21, 2017	JA7750
Dkt. 7550, Faneca Objectors’ Reply to Response to Motion for Attorney Fees, filed Apr. 25, 2017	JA7756
Dkt 7550-1, Expert Declaration of Joseph J. Floyd, filed Apr. 25, 2017	JA7776
Dkt. 7555, Reply in Support regarding: Jones Objectors’ Fee Petition, filed Apr. 26, 2017	JA7785
Dkt. 7605, Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 5, 2017.....	JA7790
Dkt. 7606, Co-Lead Class Counsel’s Memorandum of Law regarding: Aldridge Objectors’ Motion for Discovery and Objections as Unauthorized Sur-Reply, filed May 5, 2017.....	JA7793
Dkt. 7608, Armstrong Objectors’ Reply regarding: Their Attorneys’ Fee Petition, filed May 5, 2017.....	JA7820
Dkt. 7621, Mitnick Law Office’s Brief and Statement of Issues in Support of Request for Review of Objectors’ Fee Petition, filed May 9, 2017	JA7828
Dkt. 7626, Aldridge Objectors’ Response in Opposition regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 12, 2017.....	JA7844

Dkt. 7627, Aldridge Objectors’ Memorandum of Law regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 12, 2017	JA7847
Dkt. 7708, Faneca Objectors’ Reply to Response to Motion regarding: Faneca Objectors’ Motion for Attorney Fees and Mitnick Law Office’s Brief and Statement of Issues, filed May 18, 2017	JA7856
Dkt. 7710, Co-Lead Class Counsel’s Reply to Response to Motion regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 19, 2017	JA7863
Dkt. 8310, Order To Show Cause regarding: Fees and Expenses, filed Aug. 23, 2017	JA7872
Dkt. 8327, Co-Class Counsel’s Response to Order To Show Cause and Request for Clarification and Extension of Time, filed Aug. 28, 2017	JA7891
Dkt. 8330, Notice by Plaintiff(s) regarding: Co-Lead Class Counsel’s Fee Petition, filed Aug. 29, 2017	JA7895
Dkt. 8350, Aldridge Objectors’ Response regarding: Aug. 23, 2017 Order, filed Aug. 31, 2017	JA7898
Dkt. 8354, Co-Lead Class Counsel’s Response in Opposition regarding: Notice by Plaintiff(s) For Appointment of Magistrate, filed Sept. 5, 2017	JA7909
Dkt. 8358, Order regarding: the Court’s Continuing and Exclusive Jurisdiction under Article XXVII of the Amended Class Action Settlement, filed Sept. 7, 2017	JA7913
Dkt. 8364, Reply to Co-Lead Class Counsel’s Response to Request To Appoint Magistrate Judge, filed Sept. 11, 2017	JA7916
Dkt. 8367, Order Directing the Filing of Declarations regarding: Proposed Fee Allocation, filed Sept. 12, 2017	JA7920
Dkt. 8372, Notice regarding: Professor William B. Rubenstein’s Appointment as Advisor to Plaintiff’s Steering Committee, filed Sept. 13, 2017	JA7921

Dkt. 8376, Order Appointing Professor Rubenstein as an Expert Witness on Attorneys’ Fees, filed Sept. 14, 2017.....	JA7923
Dkt. 8395, Aldridge Objectors’ First Supplement in Support of Objections, filed Sept. 20, 2017.....	JA7926
Dkt. 8396, Aldridge Objectors’ Motion To Compel Compliance with Case Management Order No. 5, filed Sept. 20, 2017	JA7931
Dkt. 8440, Co-Lead Class Counsel’s Response in Opposition regarding: Aldridge Objectors’ Motion To Compel, filed Oct. 4, 2017.....	JA7933
Dkt. 8447, Seeger Declaration regarding: Proposed Fee Allocation Order, filed Oct. 10, 2017	JA7943
Dkt. 8447-1, Exhibit to Declaration of Christopher A. Seeger in Support of Proposed Allocation	JA7965
Dkt. 8447-2, Declaration of Brian T. Fitzpatrick	JA7967
Dkt. 8448, Order Directing Filing of Counter-Declarations regarding: Attorneys’ Fees, filed Oct. 12, 2017	JA7980
Dkt. 8449, Aldridge Objectors’ Reply to Co-Lead Class Counsel’s Response to Their Motion To Compel Compliance with Case Management Order No. 5, filed Oct. 12, 2017	JA7981
Dkt. 8470, Co-Lead Class Counsel’s Motion for Order Directing the Claims Administrator To Withhold Any Portions of Class Member Monetary Awards, filed Oct. 23, 2017	JA7987
Dkt. 8532, Armstrong Objectors’ Response to Class Counsel’s Proposed Allocation of Common Benefit Attorneys’ Fees, filed Oct. 25, 2017.....	JA7992
Dkt. 8556, Counter-Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Oct. 26, 2017.....	JA7996
Dkt. 8653, Declaration of Craig R. Mitnick regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8005

Dkt. 8701, Co-Lead Class Counsel Anapol Weiss’s Proposed Alternative Methodology for Fee Allocation, filed Oct. 27, 2017	JA8020
Dkt. 8709, Declaration of Gene Locks, Class Counsel, regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8051
Dkt. 8719, Counter- Declaration of Thomas V. Girardi regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8086
Dkt. 8720, Declaration of Anthony Tarricone in Opposition regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8095
Dkt. 8720-1, Exhibit to Declaration of Anthony Tarricone	JA8107
Dkt. 8720-2, Kreindler & Kreindler LLP Opposition to Co-Lead Counsel’s Petition for an Award of Common Benefit Attorneys’ Fees	JA8109
Dkt. 8721, Declaration of Michael L. McGlamry regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8122
Dkt. 8722, Declaration of Charles S. Zimmerman regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8141
Dkt. 8723, Response by Neurocognitive Football Lawyers and The Yerid Law Firm In Support of Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8158
Dkt. 8724, Declaration of Derriel C. McCorvey regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8167
Dkt. 8725, Declaration of Lance H. Lubel regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8179
Dkt. 8726, Faneca Objectors’ Response in Opposition to Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017	JA8192
Dkt. 8727, Declaration of James T. Capretz regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8206
Dkt. 8728, Declaration of Steven C. Marks regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8212

Dkt. 8900, Order Directing Filing of Omnibus Replies regarding: Counter-Declarations, filed Nov. 7, 2017	JA8215
Dkt. 8915, Notice by Class Counsel regarding: Settlement Implementation, filed Nov. 10, 2017	JA8216
Dkt. 8917, Notice by Mitnick Law Office, filed Nov. 10, 2017	JA8218
Dkt. 8929, Order regarding: Extension for Omnibus Reply, filed Nov. 17, 2017	JA8219
Dkt. 8934, Co-Lead Class Counsel’s Omnibus Reply to Responses, Objections, and Counter-Declarations regarding: Fee Petition, filed Nov. 17, 2017	JA8221
Dkt. 8934-1, Supplemental Declaration of Brian T. Fitzpatrick, filed Nov. 17, 2017	JA8267
Dkt. 8937, Plaintiffs’ Motion for Leave To File Sur-Reply Counter- Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Nov. 21, 2017	JA8270
Dkt. 8945, Zimmerman Reed LLP’s Motion for Leave To File a Sur- Reply Declaration regarding: Fee Allocation, filed Nov. 22, 2017	JA8274
Dkt. 8963, Pope McGlamry, P.C.’s Motion for Leave To File Sur- Reply Declaration regarding: Fee Allocation, filed Nov. 28, 2017	JA8276
Dkt. 9508, Order Denying Motions for Leave To File Sur-Reply Declaration, filed Dec. 5, 2017	JA8279
Dkt. 9510, Order Denying the Aldridge Objectors’ Motion To Compel Compliance with Case Management Order No. 5, filed Dec. 5, 2017	JA8280
Dkt. 9526, Export Report of Professor William B. Rubenstein, filed Dec. 11, 2017	JA8281
Dkt. 9527, Receipt of Expert’s Report and Notice regarding: Rubenstein Report Responses, filed Dec. 11, 2017	JA8376

Dkt. 9536, Aldridge Objectors’ Motion for Reconsideration regarding: Extension of Time for Rubenstein Report Responses Notice, filed Dec. 19, 2017	JA8378
Dkt. 9545, Response by the Locks Law Firm to Rubenstein Report, filed Jan. 2, 2018	JA8381
Dkt. 9547, Response by Goldberg, Persky and White, P.C.; Girardi Keese; and Russomanno & Borrello to Rubenstein Report, filed Jan. 3, 2018	JA8392
Dkt. 9548, Response by Anapol Weiss to Rubenstein Report, filed Jan. 3, 2018	JA8399
Dkt. 9549, Response by the Mokaram Law Firm; The Buckley Law Group; and The Stern Law Group to Rubenstein Report, filed Jan. 3, 2018	JA8402
Dkt. 9550, Response and Declaration of Robert A. Stein to Rubenstein Report, filed Jan. 3, 2018	JA8415
Dkt. 9551, Response by The Yerrid Law Firm and Neurocognitive Football Lawyers to Rubenstein Report, filed Jan. 3, 2018.....	JA8420
Dkt. 9552, Response by Co-Lead Class Counsel to Rubenstein Report, filed Jan. 3, 2018	JA8431
Dkt. 9552-1, Declaration of Christopher A. Seeger	JA8443
Dkt. 9553, Zimmerman Reed LLP’s Joinder to the Response of the Locks Law Firm to the Rubenstein Report, filed Jan. 3, 2018	JA8455
Dkt. 9554, Response by the Aldridge Objectors to Rubenstein Report, filed Jan. 3, 2018	JA8457
Dkt. 9555, Notice of Joinder by Robins Cloud, LLP regarding: Responses to Rubenstein Report, filed Jan. 3, 2018.....	JA8469
Dkt. 9556, Response by Class Counsel Podhurst Orseck, P.A. to Rubenstein Report, filed Jan. 3, 2018	JA8471

Dkt. 9561, Order regarding: Appointment of Dennis R. Suplee to Represent <i>pro se</i> Settlement Class Members Where There Has Been a Demonstrated Need for Legal Counsel, filed January 8, 2018.	JA8476
Dkt. 9571, Reply of Professor William B. Rubenstein to Responses to Expert Report, filed Jan. 19, 2018	JA8477
Dkt. 9576, Order Permitting Sur-Reply Filings in Response to Professor Rubenstein’s Reply, filed Jan. 23, 2018	JA8493
Dkt. 9577, Mitnick Law Office’s First Motion To Compel, filed Jan 26, 2018	JA8494
Dkt. 9581, Memorandum of Law regarding: Sur-Reply of NFL, Inc., and NFL Properties LLC to Rubenstein’s Reply to Responses, filed Jan. 30, 2018	JA8498
Dkt. 9587, Notice by Plaintiff(s) regarding: Sur-Reply of X1Law to Rubenstein’s Reply to Responses, filed Jan. 30, 2018	JA8500
Dkt. 9588, Notice by Plaintiff(s) regarding: Aldridge Objectors’ Sur-Reply to Rubenstein’s Reply to Responses, filed Jan. 30, 2018	JA8506
Dkt. 9753-1, Exhibit A, Curriculum Vitae of Brian R. Ott, M.D.	JA8513
Dkt. 9753-2, Exhibit B, Curriculum Vitae of Mary Ellen Quiceno, M.D., F.A.A.N.	JA8564
Dkt. 9757, Order regarding: Joint Application by Co-Lead Class Counsel and Counsel for the NFL and NFL Properties, LLC for Appointment of Two Appeals Advisory Panel Members and Removal of One Appeals Advisory Panel Member, filed Mar. 6, 2018.....	JA8577
Dkt. 9760, Order Adopting Rules Governing Attorney's Liens, filed Mar. 6, 2018	JA8581
Dkt. 9786, Class Counsel’s Motion To Appoint the Locks Law Firm as Administrative Class Counsel, filed Mar. 20, 2018	JA8603
Dkt. 9813, Pope McGlamry P.C.’s Motion for Joinder regarding: Administrative Class Counsel, filed Mar. 26, 2018.....	JA8628

Dkt. 9816, Motion for Joinder by Locks Law Firm regarding: Hearing To Correct Fundamental Implementation Failures in Claims Processing, filed Mar. 26, 2018	JA8632
Dkt. 9819, Motion for Joinder by Provost Umphrey Law Firm, LLP regarding: Administrative Class Counsel, filed Mar. 27, 2018	JA8635
Dkt. 9820, Zimmerman Reed LLP’s Joinder in Request for Action To Correct Implementation Failures in the Claims and BAP Administration, filed Mar. 27, 2018	JA8638
Dkt. 9821, Motion for Joinder by McCorvey Law, LLC regarding: Administrative Class Counsel, filed Mar. 27, 2018.....	JA8650
Dkt. 9824, Motion for Joinder by Lieff Cabraser Heinmann & Bernstein, LLP regarding: Hearing Request on Claims Settlement Process, filed Mar. 28, 2018	JA8654
Dkt. 9829, Motion for Joinder by Law Office of Hakimi & Shahriari regarding: Administrative Class Counsel, filed Mar. 28, 2018	JA8659
Dkt. 9830, Motion for Joinder by Casey Gerry regarding: Administrative Class Counsel, filed Mar. 28, 2018.....	JA8664
Dkt. 9831, Motion for Joinder by Podhurst Orseck regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8667
Dkt. 9833, Order regarding: Hearing as to Allocation, filed Mar. 28, 2018.....	JA8671
Dkt. 9834, Motion for Joinder by Mitnick Law Office regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8677
Dkt. 9835, Co-Lead Class Counsel’s Letter regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8683
Dkt. 9836, Motion for Joinder by Wyatt Law regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8685
Dkt. 9837, Motion for Joinder by Robin Clouds LLP regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8688

Dkt. 9838, Notice by the Locks Law Firm In Response to Request for Deadline for Joinders and Date of Response Motion, filed Mar. 29, 2018.....	JA8690
Dkt. 9839, Motion for Joinder by Anapol Weiss regarding: Hearing Request on Claims Settlement Process, filed Mar. 29, 2018.....	JA8691
Dkt. 9840, Notice by the Locks Law Firm in Response to Request for Deadline for Joinders and Date of Response to Motion, filed Mar. 30, 2018.....	JA8694
Dkt. 9842, Motion for Joinder by Kreindler & Kreindler LLP regarding: Administrative Class Counsel, filed Mar. 30, 2018	JA8696
Dkt. 9843, Motion for Joinder by the Yerrid Law Firm and Neurocognitive Football Lawyers, filed Mar. 30, 2018	JA8700
Dkt. 9845, Order Directing Filing of Motions for Joinder, filed Apr. 2, 2018	JA8720
Dkt. 9847, Notice by Robins Cloud LLP of Withdrawal of Joinder regarding: Administrative Class Counsel, filed Apr. 2, 2018	JA8722
Dkt. 9848, Motion for Joinder by the Locks Law Firm to Anapol Weiss’s Motion To Compel regarding: Reimbursement of Common Benefit Expenses and Establishment of Education Fund, filed Apr. 3, 2018	JA8724
Dkt. 9851, Notice by Lieff Cabraser Heinmann & Bernstein LLP of Withdrawal of Joinder regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8730
Dkt. 9852, Co-Lead Class Counsel’s Response to Motion for Joinder Seeking Court Intervention, filed Apr. 3, 2018	JA8733
Dkt. 9853, Motion for Joinder by Hagen Roskopf LLC regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8736
Dkt. 9854, Motion for Joinder by Smith Stallworth PA regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8741

Dkt. 9855, Motion for Joinder by Berkowitz and Hanna LLC regarding: Administrative Class Counsel and For a Hearing, filed Apr. 3, 2018	JA8743
Dkt. 9856, Motion for Joinder by Aldridge Objectors’ regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8750
Dkt. 9856-1, Memorandum in Support of Movants’ Joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Class Counsel.....	JA8752
Dkt. 9856-2, Exhibit A, Email correspondence dated Sept. 20, 2018	JA8761
Dkt. 9856-3, Exhibit B, Email correspondence dated Oct. 19, 2017	JA8762
Dkt. 9856-4, Exhibit C, Email correspondence dated Feb. 19, 2018	JA8764
Dkt. 9860, Memorandum of Hon. Anita Brody Granting Co-lead Counsel’s Petition for Award of Attorneys’ Fees and Reimbursement of Expenses, filed Apr. 5, 2018.....	JA8766
Dkt. 9862, Memorandum Opinion regarding: Attorneys’ Fees, filed Apr. 5, 2018	JA8786
Dkt. 9865, Co-Lead Class Counsel’s Response to Motion regarding: Cost Reimbursement, filed Apr. 5, 2018	JA8796
Dkt. 9870, Claims Administrator’s Response to Locks Law Firm’s Motion for Partial Joinder, filed Apr. 9, 2018	JA8802
Dkt. 9874, Co-Lead Class Counsel’s Notice regarding: Class Counsel’s Attorneys’ Fee Award, filed Apr. 11, 2018	JA8837
Dkt. 9881, Co-Lead Class Counsel’s Response to Locks Law Firm’s Motion for Partial Joinder, filed Apr. 13, 2018	JA8839
Dkt. 9885, Co-Lead Class Counsel’s Response in Opposition regarding: Administrative Class Counsel, filed Apr. 13, 2018	JA8847
Dkt. 9890, Order Denying the Motion of Class Counsel Locks Law Firm for Appointment of Administrative Class Counsel, filed Apr. 18, 2018	JA8884

Dkt. 9920, Tarricone Declaration regarding: Mar. 28, 2018 Order, filed May 1, 2018	JA8886
Dkt. 9921, Locks Law Firm’s Motion for Reconsideration of the Denial of the Locks Law Firm’s Motion for Appointment of Administrative Class Counsel, filed May 1, 2018	JA8891
Dkt. 9926, Aldridge Objectors’ Motion for New Trial, filed May 2, 2018	JA8906
Dkt. 9955, Order Directing Firms Seeking Attorneys’ Fees To File Materials, filed May 3, 2018	JA8908
Dkt. 9970, Amended Order for Hearing, filed May 7, 2018	JA8910
Dkt. 9985, Order Denying the Motion for Entry of Case Management Order Governing Applications for Attorneys’ Fees; Cost Reimbursements; and Further Fee Set-Aside, filed May 14, 2018	JA8912
Dkt. 9990, Declaration by Mitnick Law Office regarding: Independent Fee Petition, filed May 14, 2018	JA8913
Dkt. 9993, Co-Lead Class Counsel’s Response in Opposition regarding: Motion for Reconsideration of Administrative Class Counsel, filed May 15, 2018	JA8916
Dkt. 9995, Faneca Objectors’ Statement regarding: Improvements to Preliminarily-Approved Settlement, filed May 16, 2018	JA8921
Dkt. 9996, Co-Lead Class Counsel’s Response in Opposition regarding: Motion for New Trial, filed May 16, 2018	JA8925
Dkt. 10000, Co-Lead Class Counsel’s PowerPoint from May 15, 2018 Hearing, filed May 17, 2018	JA8939
Dkt. 10001, Anapol Weiss’s Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 17, 2018	JA8954
Dkt. 10004, Order regarding: Hearing Concerning Attorneys’ Fees, filed May 21, 2018	JA8961

Dkt. 10007, Order Denying Anapol Weiss’ Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 21, 2018.....	JA8963
Dkt. 10016, Letter Brief by the Locks Law Firm, filed May 22, 2018.....	JA8964
Dkt. 10017, Co-Lead Class Counsel’s Response regarding: Locks Law Firm’s Letter Brief, filed May 23, 2018	JA8968
Dkt. 10019, Explanation and Order of Judge Brody re Allocation of Attorneys’ Fees, filed May 24, 2018	JA8971
Dkt. 10022, Aldridge Objectors’ Motion To Stay regarding: Attorneys’ Fees Allocation, filed May 25, 2018	JA8998
Dkt. 10023, Order Finding as Moot Motion To Strike Class Counsel’s Sur-Reply regarding: Fee Allocation, filed May 29, 2018	JA9000
Dkt. 10026, Co-Lead Class Counsel’s Response regarding: Mitnick Law Office’s Petition for Independent Award of Attorneys’ Fees, filed May 29, 2018	JA9001
Dkt. 10031, Co-Lead Class Counsel’s Response in Opposition regarding: Aldridge Objectors’ Motion To Stay, filed May 31, 2018.....	JA9004
Dkt. 10039, Aldridge Objectors’ Reply to Response to Motion regarding: Motion To Stay, filed June 1, 2018	JA9015
Dkt. 10073, The Locks Law Firm’s Motion for Reconsideration of the Court’s Explanation and Order, filed June 7, 2018	JA9025
Dkt. 10085, Order Denying as Moot the Aldridge Objectors’ Motion To Reconsider Withdrawal of Fed. R. Evid. 706 Deposition, filed June 19, 2018	JA9034
Dkt. 10086, Order Denying as Moot the Motion Requesting the Court To Direct the Relevant Parties To Negotiate on the Allocations of the Common Benefit Fund, filed June 19, 2018.....	JA9035
Dkt. 10091, Co-Lead Class Counsel’s Response in Opposition regarding: the Locks Law Firm’s Motion for Reconsideration, filed June 19, 2018	JA9036

Dkt. 10096, Faneca Objectors’ Notice of Filing Hearing Slides, filed June 22, 2018	JA9042
Dkt. 10105, Certified Copy of Order from the USCA, filed June 28, 2018	JA9048
Dkt. 10119, Order Denying Motion for Reconsideration of the Denial of Locks Law Firm’s Motion for Appointment of Administrative Class Counsel, filed July 2, 2018.....	JA9049
Dkt. 10127, Order Denying Motion for Reconsideration of the Court's Explanation and Order ECF Nos. 10072 and 10073, filed July 10, 2018	JA9051
Dkt. 10128, First Verified Petition of Co-Lead Class Counsel Christopher A. Seeger for an Award of Post-Effective Date Common Benefit Attorneys’ Fees and Costs, filed July 10, 2018	JA9052
Dkt. 10134, Transcript of May 15, 2018 Hearing, filed July 13, 2018.....	JA9073
Dkt. 10145, Status Report of Co-Lead Class Counsel, filed July 18, 2018.....	JA9198
Dkt. 10165, Aldridge Objectors’ Objections regarding: Post-Effective Date Fees, filed July 24, 2018.....	JA9205
Dkt. 10165-1, Exhibit 1, Declaration of Christopher A. Seeger	JA9221
Dkt. 10165-2, Exhibit 2, Letter from Craig R. Mitnick to Judge Brody dated Apr. 16, 2018	JA9224
Dkt. 10165-3, Text of Proposed Order	JA9229
Dkt. 10188, Notice of Appeal of Locks Law Firm from the May 24, 2108 Explanation and Order ECF No. 10019, filed August 2, 2018.....	JA9230
Dkt. 10261, Zimmerman Reed LLP’s Objection regarding: Post- Effective Date Fees, filed Sept. 18, 2018	JA9233
Dkt. 10278, Declaration of Christopher A. Seeger regarding: Post- Effective Date Fees, filed Sept. 27, 2018	JA9242

Dkt. 10283, Order Adopting Amended Rules Governing Attorneys' Liens, filed Oct. 3, 2018	JA9248
Dkt. 10294, Order Adopting Amended Rules Governing Petitions for Deviation from the Fee Cap, filed Oct. 10, 2018.....	JA9272
Dkt. 10368, Report and Recommendation of Magistrate Judge Strawbridge, filed January 7, 2109 ..	JA9290
Dkt. 10374, Second Verified Petition of Co-Lead Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed January 10, 2109	JA9383
Dkt. 10624, Order regarding: Vacating appointments of all Class Counsel, Co-Lead Class Counsel, and Subclass Counsel and Reappointing Christopher A. Seeger as Class Counsel, filed May, 24, 2019	JA9402
Dkt. 10677, Report and Recommendation of Magistrate Strawbridge, filed June 20, 2109	JA9404
Dkt. 10756-1, David Buckley, PLLC, Mokaram Law Firm and Stern Law Group's Petition to Establish Attorney's Lien, filed July 18, 2019	JA9425
Dkt. 10767, Third Verified Petition of Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed July 25, 2109	JA9428

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323
Case No. 12-md-2323 (AB)

Kevin Turner and Shawn Wooden,
on behalf of themselves and others
Similarly situated,

Civil Action No. 14-cv-0029

Plaintiffs,

vs.

National Football League and NFL
Properties LLC, successor-in-interest
to NFL Properties, Inc.

Defendants.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**COUNTER-DECLARATION OF CHARLES S. ZIMMERMAN IN RESPONSE
TO PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEY'S FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND PAYMENT OF CASE
CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES.**

I, Charles S. Zimmerman, a Partner at Zimmerman Reed LLP, submit this declaration in accord with 28 U.S.C. § 1746, based upon my personal knowledge of the matters set forth herein:

1. Zimmerman Reed raises five objections to the proposed common benefit fund allocation: (1) Seeger Weiss subjectively determined the amount of the lodestar multipliers

without compensating law firms who exerted significant effort and incurred substantial risk in the early phases of this case, deeming that Zimmerman Reed should receive no multiplier despite the fact that it took substantial risk, contributed significantly to the litigation, and produced high quality work, (2) Seeger Weiss's proposed multiplier for its own lodestar is disproportionately high, causing a windfall for Seeger Weiss while leaving other contributors undercompensated, (3) the proposed 5% holdback on every Monetary Award is disproportionate and results in double-dipping, (4) the proposed allocation fails to compensate Zimmerman Reed for its post-Effective Date common benefit work authorized by Co-Lead Class Counsel to prevent the spread of misinformation and stop unauthorized solicitations of retained clients, and (5) Professor Issacharoff's lodestar multiplier appears to be unreasonable.

***Zimmerman Reed's Extensive Early Work, PSC Member Efforts,
and Measures Taken as the Co-Chair of the Ethics Committee.***

2. My law firm was retained by many former National Football League ("NFL") players before this litigation commenced. We began our investigation during the litigation of a publicity rights class action against the NFL, *Dryer, et al v. National Football League*, No. 09-CV-2182 (D. Minn. Aug. 20, 2009), during which we noticed unusually high rates of neurological complications amongst former players. We met with Dr. Bennet Omalu – who, at that time, had only recently discovered the link between NFL football and the development of CTE – and other key figures in the science of NFL head injuries to discuss the long-term effects of head injuries in the NFL. We also organized early meetings between attorneys looking to assist players in a concerted action against the NFL. In addition, we met in person and via teleconference, with Jason Luckasevic throughout early 2011 to explore potential legal and factual claims and scientific theories.

5. After the formation of the MDL, I sought and was appointed to the Plaintiffs' Steering Committee ("PSC"). My firm and I worked at the request of Lead Counsel on a variety of matters, including researching and drafting related to the NFL's motion to dismiss on preemption grounds, meeting with experts regarding a medical monitoring protocol, participating in leadership strategy meetings and activities, coordinating the participation of players for public relations and other efforts, and acquiring information necessary for settlement efforts.

JA8143

Zimmerman Reed undertook significant risk in filing these individual claims, hoping to pursue a common solution but prepared to litigate individual cases through trial and appeal. Eventually, by the work of the PSC, PEC, Co-Lead Counsel, and the leadership of Chris Seeger, the Parties agreed upon a landmark settlement, obtaining a remarkable benefit to former players.

7. Zimmerman Reed's work did not end after the Settlement was announced. Rather, my firm, in conjunction with Pope McGlamry, discovered significant confusion among the class concerning the substance of the Settlement and the relationship between law firms and their clients. Some attorneys, law firms, and other organizations were apparently misrepresenting the Settlement benefits and misleading former players as to their attorney-client relationships. Additionally, Zimmerman Reed learned of attempts by some entities to provide unfair pre-Settlement loans and advances.

8. During a meeting between the PSC and Co-Lead Counsel in late 2013, I raised my concerns about the inappropriate solicitation of retained clients by unscrupulous attorneys, efforts to mislead players as to the benefits of the Settlement, and unconscionable pre-Settlement advanced loans and purported assignments. To remedy those concerns, Co-Lead counsel requested that Zimmerman Reed form an Ethics Committee and I was appointed Co-Chair by the PSC. I sought to identify the entities contributing to the confusion, drafted reports and summaries for Co-Lead Counsel, and when authorized by Co-Lead counsel, sent cease and desist letters to wrongdoers. From 2013 up until early this year, I urged Co-Lead Counsel to address these issues, as former players were growing increasingly confused as to who represented them, the role of PSC attorneys, and the qualifications for and benefits of the Settlement. Additionally, I raised the growing issues with wrongful terminations of attorney-client relationships based on misleading tactics and unethical conduct by certain law firms attempting to grow their client

base. In early 2017, Zimmerman Reed prepared a memorandum identifying the law firms and other organizations spearheading efforts to mislead players and solicit retained players.

9. Zimmerman Reed's memorandum to Co-Lead Counsel included information about the number of client terminations among the PSC firms caused by improper solicitation, misrepresentations, and wrongful guarantees. Zimmerman Reed alone was terminated by 71 clients - mostly due to what I consider the improper conduct of other attorneys. Recently, as former players learned the extent of the misrepresentations made to them, Zimmerman Reed and other firms have had several former clients return to their original firm. Had action been taken sooner, the detriment to former players' claims and our attorney-client relationship, and players' misunderstanding of the Settlement could have been prevented. Zimmerman Reed, at a minimum, helped identify the growing confusion among players and ensure the merits of the Settlement were better understood.

10. Eventually, a lawsuit was finally filed against one entity, RD Legal Funding, who offered purportedly unconscionable loans to former players. That action was brought by the Consumer Finance Protection Bureau and the New York attorney general. Following that action, a New York Times article highlighted questionable practices by attorneys and lenders in the aftermath of the NFL Concussion Settlement.¹ The article prompted this Court's September 19, 2017 hearing on the extent of the misleading loan practices. Seeger Weiss is now taking action against certain entities, some of whom had long been identified by my firm as wrongdoers.

11. Zimmerman Reed continues to represent a significant number of former players, assisting these players in obtaining necessary medical testing, scheduling and preparing for BAP testing and MAF examinations, and finalizing and submitting claims for Monetary Awards.

¹ See Ken Belson, *After N.F.L. Concussion Settlement, Feeding Frenzy of Lawyers and Lenders*, NY Times (July 16, 2016).

12. On March 4, 2016, Zimmerman Reed unilaterally and voluntarily reduced our contingency fee on all our retainers from 33% down to 20%. We made this adjustment in part to reflect that some of our effort on behalf of retired NFL players in the litigation contributed to the common benefit of the class, and would be compensated during allocation of the common benefit fund.

13. Both entering into individual contingency contracts and contributing to the common benefit are common practices in comparable other cases,² and firms are often fairly compensated for both their individual and common benefit efforts. The Ethics Subcommittee, which I co-chaired, repeatedly, and for the past several years, raised the issue of attorneys' fees with Co-Lead Counsel, requesting they raise the issue of the interplay between common benefit fees and retainer contract fees with the Court to give clarity and comfort to the Class. Since Co-Lead Counsel did not seek guidance from the Court to address the interplay between common benefit and retainer contract fees, Zimmerman Reed acted unilaterally to protect and give comfort to its clients by reducing its retainer agreement fees from 33% to 20%.

The Common Benefit Fund Fee Allocation

14. On October 12, 2017, Seeger Weiss submitted a declaration proposing an allocation of the Common Benefit Fund of \$107,735,097.27 among twenty-three law firms, two objector firms, and one expert contributing to the common benefit of the class of former NFL players. The proposed allocation compensates participating law firms by applying a proposed multiplier against the firms' adjusted lodestar to determine the total compensable amount allocated to each firm from the common benefit fund. The multipliers range from 0.75 to 3.885.

² See, e.g., *In re Vioxx*, 760 F.Supp.2d 640, 658 (E.D. La. 2010); *In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No. MDL 05-1708 DWF/AJB, 2008 WL 682174, at *15 (D. Minn. Mar. 7, 2008).

15. According to Seeger Weiss's report to the Court, the entire adjusted lodestar necessary to bring this action, settle the case, and implement the Settlement is \$39,223,974.85. The average lodestar per contributing firm (including Professor Issacharoff) is approximately \$1.5 million. That number is significantly skewed by Seeger Weiss's lodestar, which, at \$18,124,869.10, accounts for almost half of the entire total lodestar. Nineteen law firms and Professor Issacharoff submitted lodestar for less than \$1 million each. The remaining five firms submitted lodestars between \$1 million and \$5 million. Anapol Weiss, the other Court-appointed Co-Lead Counsel along with Seeger Weiss, had a total lodestar of \$1,857,436.00, barely ten percent of Seeger Weiss's total lodestar. This striking lodestar is but one example demonstrating Seeger Weiss reserved the work in this case for itself, while excluding other Lead Counsel, PSC and PEC members who were eager to participate.

16. The multipliers Seeger Weiss proposes are similarly disproportionate. Seeger Weiss proposes it receive a lodestar multiplier of 3.885. By contrast, the remaining firms would receive an average multiplier of 1.2068. Seeger Weiss has proposed nineteen of the twenty-four contributors receive a multiplier of 1.5 or less. Only three other firms would receive a multiplier above 2.0. The only other entity to receive a multiplier greater than 3.0 is Professor Issacharoff, whose role in this case began later, when the case posed less risk. Seeger Weiss has proposed that Zimmerman Reed, despite its substantial effort and risk undertaken even before this litigation commenced, should receive only a 1.0 multiplier, which, of course, is no multiplier at all.

The Criteria Seeger Weiss Used to Calculate Proposed Multipliers Does Not Adequately Compensate Contributors for Their Efforts and Risk Undertaken, Pre-Settlement.

17. Seeger Weiss's proposed multipliers are based on its own subjective view of each firm's contribution, and plainly do not recognize the contributions of the firms appointed to

leadership positions, and includes absolutely no consideration of pre-Settlement efforts. According to Mr. Seeger's Declaration, he determined each firm's lodestar multiplier "[b]ased on [his] assessment of the relative value of each of the firms' contributions." Declaration of Christopher A. Seeger at ¶ 5, Oct. 10, 2017, ECF 8447 ("Seeger Decl.") Mr. Seeger's allocation purportedly considered only three factors: (1) Roles in leadership, (2), the point at which a firm's claimed common benefit contributions were made, and (3) contributions to the Settlement. *Id.* at ¶ 14.

18. Under Mr. Seeger's proposed allocation, the pioneers of this case whose early efforts and representation of large numbers of players provided the critical mass and laid the groundwork for the landmark Settlement are not recognized for that effort. Firms, including Zimmerman Reed, undertook substantial risk when they filed the first cases, investing significant time and effort on behalf of both their individual clients and the Class as a whole, in spite of serious risk and uncertainty. The early concerted effort obtained a critical mass of plaintiffs, pursuant to our coordinated strategy, that legitimized the lawsuit, brought national media attention, and paved the path towards the Settlement. *See e.g. In re Diet Drugs*, 582 F.3d 524, 547 (3d Cir. 2009) ("the number and cumulative size of the massed cases created a penumbra of class-type interest on the part of all litigants and of public interest on the part of the court and the world at large.").

19. Risk taken at the outset of a case is a critical factor in determining any fee allocation. *See id.* at 542 ("The court should "evaluat[e] the risk of nonpayment as of the inception of the action and not through the rosy lens of hindsight." (internal quotations removed)); *In re Vioxx*, 760 F.Supp.2d 640, 658 (E.D. La. 2010) ([T]hese factors primarily deal with the expectation of plaintiffs' attorneys at the *outset of the case* when measuring the risks

involved and deciding whether to accept the case. In effect, these factors seek to reward the attorney for accepting the risk and achieving successful results.” (internal quotations removed) (emphasis added)).

20. Seeger Weiss was not materially involved in this case until after it was already consolidated before this Court by the Judicial Panel for Multidistrict Litigation. Because of its limited involvement in the early stages of this case, Seeger Weiss cannot adequately gauge those early efforts and risk. And, in fact, Mr. Seeger did not consider those efforts at all. For that reason, those firms involved early in this litigation almost exclusively received multipliers less than 2.0, and many, including Zimmerman Reed, received no multiplier. The early pioneers of this case are therefore significantly undercompensated for laying the groundwork for the litigation overall, for the risk involved in bringing and organizing the first cases, for building the critical mass that created an interest on the part of all litigants eventually leading to this settlement, and for raising national awareness of the CTE epidemic.

21. Zimmerman Reed did not ask, and is not asking here, for compensation for its work on any of its individual cases, which will be compensated, if at all, through individual contracts if and when its individual clients qualify for monetary compensation in the Settlement. Rather, Zimmerman Reed is requesting consideration of the risk it incurred and common benefit it provided by filing a sizable number of individual cases as part of a common strategy designed to pursue a common remedy for the entire class of former players. These efforts warrant a reasonable multiplier on Zimmerman Reed’s common benefit time, which Seeger Weiss has deemed to be reasonably expended and compensable on behalf of the Class as a whole.

Seeger Weiss's Multiplier is Unreasonably High.

22. Mr. Seeger's Declaration proposes a 3.885 multiplier for his firm, swelling an already sizable \$18,124,869.10 lodestar into \$70,415,116.45. By comparison, the average multiplier for the remaining twenty-two contributing firms (excluding Professor Issacharoff) is 1.2068, resulting in a combined total compensation of \$34,478,161.44. That is over a 2:1 ratio in favor of Seeger Weiss.

23. Seeger Weiss, and Chris Seeger specifically, undoubtedly made important contributions to this litigation and to the ultimate Settlement, as is reflected in its substantial lodestar. However, "any given attorney should receive neither too little nor too much of an award as compensation." *In re Sulzer*, 268 F. Supp. 2d 907, 922 (N.D. Ohio 2003). Even with Seeger Weiss's important contributions to this litigation, the significant portion of the fund it would receive under its proposal results in an unwarranted windfall. More importantly, overcompensating Seeger Weiss for its role undercompensates and undervalues the work of other contributors.

24. When a party has an already large lodestar, applying a large multiplier, especially one several times larger than any other law firm, creates the risk of inappropriate compensation. As one court noted, "[w]here there are large economies of scale to consider . . . a slight multiplier is justified; however, anything more than a slight multiplier would result in an unreasonable large attorney fee and/or would promote providing windfalls." *In re Guidant Corp.*, , 2008 WL 682174, at *15. Mr. Seeger's proposal raises the same concern. Due to his multiplier, Seeger Weiss receives over \$50 million more than its already significant lodestar, while other contributors to this action receive minimal, or zero, multipliers.

25. Again, Seeger Weiss' lodestar is at least four times greater than every other applicant; and, under its own proposal, it would receive the highest multiplier by far. The next highest multiplier for any law firm is 2.5 for Anapol Weiss, who was Co-Lead Counsel with Seeger Weiss. If accepted, Seeger Weiss would receive over sixty-five percent of the total common benefit fund despite having less than fifty-percent of the lodestar. In fact, it would receive almost double the amount of all other applicants combined. To put things in further perspective, Mr. Seeger's proposal requests a total of \$68,358,989.93 as risk compensation or multiplier surplus (*i.e.* fees awarded above the lodestar expended), and of this, Seeger Weiss seeks \$52,290,274.35 or more than 75% of the total multiplier surplus requested. This, when the overwhelming majority of all work done by Seeger Weiss was done after Settlement during a time when the action posed significantly reduced risk.

26. Seeger Weiss deserves to be well compensated for its outstanding work on this case and in obtaining a Settlement that provides significant benefits to Class members. However, its compensation should not so significantly undermine the value that other firms contributed to this case, especially when Seeger Weiss's lodestar is built upon a disproportional distribution of workload.

27. Because of Seeger Weiss's disproportionate multiplier, the remaining contributors receive a slight average lodestar multiplier of 1.2068, which includes fourteen firms who would receive a multiplier of 1.0 or less. Some of those firms, like Zimmerman Reed, bore significant risk in bringing this litigation and the individual cases against the NFL. A 1.0 multiplier does nothing to compensate the firms who absorbed the early risk of this case when the novelty and facts of the case made any Settlement far from certain. Simply put, saying these firms deserve no multiplier diminishes the role the firms played in achieving the great result in this case.

Seeger Weiss is not solely responsible for the successful outcome here. Rather, the PSC and PEC, in conjunction with Co-Lead Counsel, collaborated, fought together, and risked capital, time, and effort to achieve this benefit for former players. These law firms each deserve reasoned and appropriate compensation for shouldering the risk of this case. However, Seeger Weiss's unreasonably high requested multiplier – more than triple the average multiplier for every other contributing firm – precludes other contributors from adequate compensation.

The 5% Fee Withholding Is Unreasonable.

28. In addition to seeking 65% of the Common Benefit fund, Seeger Weiss also requests a 5% holdback on every single player's Monetary Award, purportedly to cover expenses and lodestar related to the Settlement Administration after January 7, 2017. Zimmerman Reed raises three objections to the holdback: (1) the size of the holdback is disproportionate to the projected future work, (2) the holdback creates a fund with no mechanism of returning unused portions, and (3) former players with a pre-Effective Date diagnosis should not be required to contribute to the fund because they receive little or no benefits from post-Effective Date Settlement Administration efforts.

29. The purpose of the 5% holdback is purportedly to fund future common benefit work related to the administration of the Settlement. If the estimated value of the Settlement holds true, the total holdback fund will likely equal approximately \$50 million. This holdback fund will be nearly half of the entire common benefit fund available for litigating the case. Such a massive fund needs to be justified by transparent accounting showing an absolute need for the significant amount of additional money, which Mr. Seeger seeks to take directly from players and their individual lawyers. Indeed, the Seeger Declaration lists the post-Effective Date lodestar, including 6830.00 hours resulting in \$4,692,414.50. This amount includes costs and

hours expended in initiating the BAP and MAF processes, providing class notices, and ensuring class members are fully registered. Many of those efforts should not need much repetition. The result is a potentially significant disproportion between the lodestar and the value of the holdback fund.

30. Because the value of the proposed holdback fund is likely to be greater than the amount necessary to ensure the continued administration of the Settlement, a system must be put in place to ensure that money from the holdback fund is properly allocated and any unspent money is returned to those who contributed to the fund. The unused amount of holdback funds is regularly reimbursed to the beneficiaries who initially gave it up as part of their claim. *See In re Zyprexa Prod. Liab. Litig.*, 467 F. Supp. 2d 256, 266 (E.D.N.Y. 2006) (“Any amount remaining in the common benefit fund after all claims on it have been settled will be returned on a pro rata basis to the individual attorneys who paid a portion of their fees into the account.”). Mr. Seeger has proposed no mechanism for pro-ration and return of the unused portions of the 5% holdback. Without any mechanism to return unspent holdback funds, Seeger Weiss will inappropriately receive most or all of the excess amount of the holdback fund without making any contribution to the common benefit, or anyone’s benefit. That is the definition of a windfall.

31. Accordingly, Zimmerman Reed requests that a system be established to refund all unspent holdback amounts on a pro-rated basis. The returned portion of the fund should be pro-rated according to the proportion each law firm paid into the fund through its attorney’s fees, and to players without attorneys who paid into the fund through their monetary awards. This process should be overseen by the Special Master, or this Court, who should review and approve all requests for compensation from the holdback fund. Independent oversight will ensure all

expenses funded from the holdbacks were necessary for the Settlement's administration, and that any unearned portions are returned to those from whom the funds were originally taken.

32. Finally, Zimmerman Reed requests that there be no 5% holdbacks on any claims until January 7, 2019. A majority of former players receiving approval for a Monetary Award within the first two years of the Settlement are those who received a Qualifying Diagnosis prior to the Effective Date, or otherwise during a time that attorneys seeking to capture the 5% holdback are already being compensated for their time from the common benefit fund. As such, they did not and will not benefit from any of the post-Effective Date "common benefit" work. For example, players with pre-Effective Date diagnosis will not benefit from the effort to select Qualified MAF physicians and BAP clinics, and any BAP oversight. Therefore, those players should not be required to contribute to the holdback fund.

Zimmerman Reed Was Not Compensated For Its Post-Settlement Efforts.

33. Mr. Seeger, in his declaration, recognized that hours spent "to combat the dissemination of misinformation to class members and other forms of exploitation of class members" were compensable. Seeger Decl., at ¶ 20(h).

34. Zimmerman Reed not only contributed to this effort, it created this effort *ab initio*. Before any action was taken by Seeger Weiss, Zimmerman Reed, as founder and Co-Chair of the Ethics Committee, frequently raised its concerns to Co-Lead Counsel about misinformation and confusing communications being directed to former players. Zimmerman Reed collected information from other PSC and PEC members in order to identify the source of misleading communications. Where necessary, and when authorized by Co-Lead Counsel, Zimmerman Reed sent cease and desist letters to the wrongdoers. Zimmerman Reed also drafted a memorandum for Co-Lead Counsel detailing the information it collected. This information

was provided to Co-Lead Counsel prior to Seeger Weiss’s own efforts to prevent the spread of misleading information.

35. The issues Zimmerman Reed first raised in 2013 and continued to raise after have ballooned into a significant problem in the Settlement’s administration, as evidenced by a separate lawsuit against RD Legal Funds and this Court’s hearing on the matter. Players have been exploited and misled. Zimmerman Reed helped identify the wrongdoers and participated in the *only* effort, at the time, to remedy player confusion and stop misleading information. Fortunately, the issues Zimmerman Reed first raised and worked to remedy are now being addressed by this Court.

36. Zimmerman Reed submitted its post-Effective Date lodestar to Seeger Weiss, at Seeger Weiss’s request, on September 15, 2017. This time included 160.30 hours amounting to \$128,209.50 of work. After requesting this time be submitted, Mr. Seeger did not include Zimmerman Reed’s time in his declaration, nor did he provide any reason for excluding it. Zimmerman Reed requests this time be compensated from the common benefit fund, or alternatively, from the holdback fund.

The Proposed Multiplier for Professor Issacharoff Is Unreasonable.

37. Zimmerman Reed objects to the substantial multiplier Seeger Weiss proposes be awarded to Professor Issacharoff. Professor Issacharoff is an expert with knowledge in “appellate advocacy and . . . class action jurisprudence.” Seeger Decl. at ¶ 15(j). He assisted Seeger Weiss during the Settlement Appeal process before the Third Circuit and U.S. Supreme Court. Under Seeger Weiss’s proposal, Professor Issacharoff would receive a multiplier of 3.55, multiples higher than any of the contributing law firms other than Seeger Weiss.

38. Professor Issacharoff does not appear to have a contingent relationship with Co-Lead Counsel for its work on this case. In his fee petition, Professor Issacharoff indicated he was submitting “lodestar calculations . . . based on current billing rates for non-contingent work.” Samuel Issacharoff Decl. at ¶ 4, February 13, 2017, ECF 7151 Ex. O. If Professor Issacharoff’s work was not done on a contingency basis, he should receive no multiplier because he bore absolutely no risk: he would have been paid regardless of the result

39. Even if his fee was contingent, however, Professor Issacharoff carried far less risk than those firms involved in this case since its inception. Professor Issacharoff did not contribute to this matter until after Settlement negotiations and appeal. The point of Settlement, where the Parties are actively attempting to reach and defend an agreement, presents far less risk than the start of litigation where the possibility of Settlement is speculative at best. As such, an attorney facing low – or no – risk should not receive a multiplier before a founding law firm in this litigation, who undertook substantial risk.

40. In conclusion, Zimmerman Reed respectfully requests that this Court:

- Reduce the lodestar multipliers of Seeger Weiss and eliminate, or reduce, the multiplier of Professor Issacharoff;
- Provide fair multipliers to firms who contributed to this litigation from its inception;
- Limit the amount of any holdback fees to cover only the reasonably expended and earned fees and expenses;
- Create a mechanism to return unearned portions of any holdback fund to those from whom they were taken;
- Order that holdback funds only be taken from monetary awards after January 7, 2019;
- Order that Zimmerman Reed receive a lodestar multiplier of 2.0 or greater;
- Compensate Zimmerman Reed for its post-Effective Date efforts.

I swear under penalty of perjury that the foregoing is true and correct.

October 27, 2017

s/ Charles S. Zimmerman
Charles S. Zimmerman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION,

Plaintiffs,

vs.

NATIONAL FOOTBALL LEAGUE, et.al,

Defendants.

No. 2:12-md-02323-AB
MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**RESPONSE TO DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT
OF PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND PAYMENT OF CASE
CONTRIBUTION AWARDS TO CLASS REPRESENTATIVE**

AND

**MOTION TO PRIORITIZE AND SEPARATE VITALLY NEEDED PLAYER
COMPENSATION PAYMENTS FROM ANY AND ALL ATTORNEYS' FEES
AWARDS OR REQUESTS AND A REQUEST THAT THE COURT APPOINT
A SPECIAL MASTER TO DEAL WITH AND DETERMINE THE VALIDITY
AND APPROPRIATE AMOUNTS OF CLAIMED ATTORNEYS' FEES AS TO MORE
FULLY ASSIST THE COURT'S GOAL OF MAKING PLAYER PAYMENTS A
REALITY RATHER THAN UNFULFILLED PROMISES**

Pursuant to Federal Rule of Civil Procedure 7(b)(1), and Section 21.1 of the Amended Settlement Agreement (the “Settlement Agreement”), Neurocognitive Football Lawyers, PLLC, and The Yerrid Law Firm respectfully ask the Court to prioritize player compensation and defer ruling on Class Counsel’s petition for attorneys’ fees pending the expeditious resolution of the claims now filed with the Claims Administrator and the payment of substantial compensation to those players who have met the necessary requirements, and in support thereof would show:

1. The public perception is that Class Counsel are now asking for millions of dollars in compensation while brain damaged players continue to deteriorate and even die while awaiting payment of their claims as the process is being “slow played” and unnecessarily delayed. Months before retired NFL players could submit their claim packages to the Claims Administrator, on February 13, 2017, Co-Lead Class Counsel filed their Petition for an Award of Attorneys’ Fees, Reimbursement of Costs and Expenses, Adoption of a Set Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives (ECF 7151) (the “Fee Petition”).

2. On September 12, 2017, this Court entered its Order directing Co-Lead Class Counsel to provide a detailed submission as a proposal for the allocation of attorneys’ fees among class counsel (ECF 8367). On October 10, 2017, Co-Lead Class Counsel filed his Declaration in Support of Proposed Allocation of Common Benefit Attorneys’ Fees, Payment of Common Benefit Expenses and Payment of Case Contribution Awards to Class Representative (ECF 8447) (the “Seeger Fee Declaration”). Although it appears the Five Percent Set Aside is not yet at issue, The Yerrid Law Firm and Neurocognitive Football Lawyers, PLLC, move this Court to defer ruling on any of the fee issues raised in the Fee Petition (ECF 7151). The

undersigned also request that the Court appoint a Special Master to resolve these pending fee requests.

3. This Court, and certainly the attorneys, bound with an absolute duty to act in their clients' best interests, should treat the welfare of the retired players with priority and put the importance of their compensation at the forefront of each and every issue pending before this Court. These injured and dying players deserve, at the very least, the best treatment that can be afforded under the terms and the intent of the Settlement Agreement.

4. The Seeger Fee Declaration (ECF 7151) provides that some \$70,415,116.45 be paid to the Seeger Weiss firm from the Common Benefit Fund with some \$37,000,000.00 to be divided between another 24 firms as well as the class representatives and a few select others. As suggested by the Counter-Declaration of Jason E. Luckasevic (ECF 8556), his firm will be paid only \$262,860.00 even though his firm, Girardi Keese, and Russomanno & Borello were the first lawyers to bring the initial action against the NFL in Los Angeles in 2010. Despite the groundbreaking work done by these lawyers in developing the case and the medicine some two years before most anyone else, his firm was given a multiplier of "1". But, like too many class actions, the lawyers compete for fees while the members of the class wait for the benefits, if any.

5. Because of concerns like these, the Court (or an appointed Special Master) should exercise both caution and prudence before proceeding on the payment of fees. Caution and prudence are particularly demanded while the vast majority of players are still having their claims processed and these players have received only minimal compensation or none at all.

6. The welfare of the vast majority of the retired players should be secured before any fees are determined and paid. This approach would certainly place compensation of attorneys' fees in a secondary position to compensation of the injured players or their survivors.

7. Contrary to the assertions made to this Court, the process of player claims administration and compensation is not “working perfectly” and the vast majority of players have not received a penny in compensation under the Settlement Agreement that was originally executed on June 25, 2014. (It should be noted the undersigned became involved only after the Settlement Agreement was in place and had no input or involvement in its creation or authorship. An unfortunate airplane crash and the death of the undersigned’s predecessor eventually led to the filing of a Notice of Appearance by The Yerrid Law Firm in this case on December 2, 2016.)

8. Section 21.1 of the Settlement Agreement states that “Class Counsel shall be entitled, **at an appropriate time to be determined by the Court**, to petition the Court on behalf of all entitled attorneys for an award of class attorneys’ fees and reasonable costs.” (Emphasis added). With all respect, now is not the appropriate time. At this point, as stated previously, the vast majority of the retired NFL players have not received a dime in the compensation promised. (Emphasis added).

9. Nonetheless, Class Counsel has requested the Court to approve payment of attorneys’ fees in the amount of **\$107,735,097.27 BEFORE** the vast majority of the players’ pending claims remain “in process” and have yet to be paid. Attached as Exhibit “A” is the proposed fee allocation submitted by co-lead Class Counsel Christopher A. Seeger, Esquire, who seeks \$70,415,116.45 for his firm’s fees alone. Of the \$112,500,000.00 deposited into the Qualified Settlement Fund, his request would consume nearly 65% of those funds in payments to him and his law firm. Even now, the lawyers seeking money from that fund are competing for fee entitlements.

10. Despite the magnitude of this claimed compensation, Class Counsel also seeks an additional payment of 5% from each and every retired player’s recovery on top of the

\$107,735,097.27 in fees already written into the Settlement Agreement which Class Counsel themselves “co-authored” with the NFL.

11. Not only do these lawyers seek their portions of the common fund and a five percent set aside from any fees generated by the individual lawyers representing retired players, but some of these same firms also seek to enforce their original fee contracts with these players to obtain another share of the fees paid by the retired players to their individual “non-class” private attorneys and thereby seek to effect and unilaterally reduce the terms of the contractual compensation to which they have no privity. This is not a “double dip” but, unfortunately, an attempt at a “triple dip”.

12. Class Counsel should be encouraged to help facilitate the timely and efficient consideration and payment of brain damaged players’ claims by deferring payment of their multi-million dollar attorneys’ fees until AFTER these brain damaged players or their survivors with pending claims are actually paid.

13. Surely the work done and results obtained for the retired NFL players should be the basis considered by this Court (or its appointed Special Master) in determining an appropriate amount of attorneys’ fees to be paid. Of course, that would be consistent with the applicable law regarding attorneys’ fees.

14. Class Counsel’s own fee expert, Brian T. Fitzpatrick, acknowledges in his declaration that courts appoint special masters to recommend an allocation of fees citing In re TFT-LCD (Flat Panel) Antitrust Litigation, 2013 WL 1365900, at *7-*14 (N.D. Cal. April 3, 2013).

15. To avoid even the appearance of placing their own financial interests ahead of the retired NFL players’ needs, Class Counsel is urged to join this Motion and voluntarily seek to

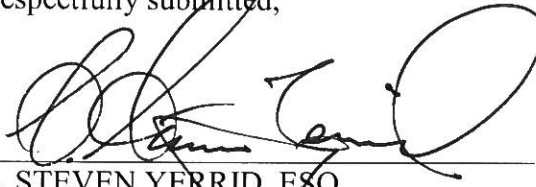
defer any ruling on payment of claimed attorneys' fees until after at least the majority of the players have been paid. This "parallel track" of separating the compensation of the players from the compensation of their attorneys should not cause an inordinate delay (if any delay at all) in the proper compensation of attorneys, and it will most certainly prioritize the actual payment of claims to brain damaged players or their estates.

16. With all respect, the undersigned submits this case must first be about the players' well-deserved compensation and not the compensation of the lawyers representing them (Emphasis added).

WHEREFORE, Neurocognitive Football Lawyers, PLLC, and The Yerrid Law Firm respectfully request this Honorable Court to defer ruling on Class Counsel's claim for attorneys' fees until after the pending retired NFL players' claims have been paid or at least a substantial number have received compensation. Further, it is requested this Court appoint a Special Master whose sole function will be to determine the reasonable amount of fees and recommend an allocation of those fees to the attorneys involved in this matter. Such process would undoubtedly unburden the Court from that task, and in doing so, allows your Honor to put exclusive focus and efforts on the long-overdue payments that should have already been made to the injured players or their estates.

Dated: October 27, 2017

Respectfully submitted,



C. STEVEN YERRID, ESQ.
RALPH L. GONZALEZ, ESQ.
HEATHER N. BARNES, ESQ.
THE YERRID LAW FIRM
101 E. Kennedy Boulevard, Suite 3910
Tampa, Florida 33602
(813) 222-8222 (telephone)
(813) 222-8224 (telefax)
hbarnes@yerridlaw.com
cjameson@yerridlaw.com
Florida Bar No. 207594
Florida Bar No. 564140
Florida Bar No. 85522

JIM HOLLIDAY, ESQ.
HOLLIDAY KARATINOS LAW FIRM PLLC
18920 N. Dale Mabry Hwy. Suite 101
Lutz, Florida 33548
(813) 868-1887 (telephone)
(813) 909-8535 (telefax)
jamesholliday@helpinginjuredpeople.com
Florida Bar No. 45284

THOMAS PARNELL, ESQ.
GIBBS & PARNELL, P.A.
722 E. Fletcher Ave.
Tampa, Florida 33612
(813) 975-4444 (telephone)
(813) 975-4445 (telefax)
Florida Bar No. 441988

JEFFREY MURPHY, ESQ.
JEFFREY D. MURPHY, P.A.
511 W. Bay St., Suite 352
Tampa, Florida 33606
(813) 443-5553 (telephone)
(813) 436-5190 (telefax)
Florida Bar No. 860808

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2017, I caused the foregoing Request to be electronically filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

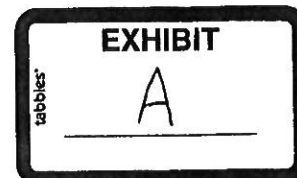
/s/ C. Steven Yerrid
C. Steven Yerrid.
The Yerrid Law Firm

Firm	Lodestar	Multiplier	Total
Anapol Weiss	\$1,857,436.00	2.5	\$4,643,590.00
Casey Gerry Schenk	\$333,920.00	1	\$333,920.00
Dugan Law Firm	\$188,340.50	1	\$188,340.50
Girard Gibbs	\$279,489.00	1.25	\$349,361.25
Girardi Keese	\$448,190.00	1	\$448,190.00
Goldberg Perksy	\$262,860.00	1	\$262,860.00
Hagens, Roskopf & Earl	\$324,480.00	1	\$324,480.00
Hausfeld	\$763,917.50	1.3	\$993,092.75
Herman Herman & Katz	\$89,660.00	1	\$89,660.00
Prof. Issacharoff	\$800,512.50	3.55	\$2,841,819.38
Kreindler & Kreindler	\$1,258,400.00	1.25	\$1,573,000.00
Levin Sedran & Berman	\$4,573,438.75	2.25	\$10,290,237.19
Locks Law Firm	\$3,084,500.00	1.25	\$3,855,625.00
McCorvey Law	\$198,780.00	1	\$198,780.00
Mitnik Law	\$898,612.50	0.75	\$673,959.38
NastLaw	\$765,060.25	1.5	\$1,147,590.38
Podhurst Orseck	\$3,005,744.50	2.25	\$6,762,925.13
Pope McGlamry	\$829,030.00	1	\$829,030.00
Rheinhardt Wendorf	\$14,899.50	0.75	\$11,174.63
Rose, Klein & Mariais	\$157,969.50	1	\$157,969.50
Seeger Weiss	\$18,124,869.10	3.885	\$70,415,116.45
Brad Sohn Law Firm	\$26,250.00	0.75	\$19,687.50
Spector Roseman	\$51,708.00	0.75	\$38,781.00
Zimmerman Reed	\$885,907.25	1	\$885,907.25
MoloLamkin/Hangle	\$150,000.00	n/a	\$150,000.00
Corboy & Demetrio	\$250,000.00	n/a	\$250,000.00
Total Fee Petition Allocation			\$107,735,097.27

18. As discussed at greater length in the accompanying Declaration of Brian T. Fitzpatrick, this allocation is reasonable and well within the precedent set by fee allocations in other Multi-District Litigation Settlements.

PART II: Continuing Work by Class Counsel

19. As I explained in my earlier Supplemental Declaration in Support of the Fee Petition, work dedicated to the common benefit of the Settlement Class Members did not end on the date that the Fee Petition was filed. Indeed, after January 7, 2017, when the opportunity for any



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 12-md-2323 (AB)

MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated,

Plaintiffs,

Hon. Anita B. Brody

V.

National Football League and NFL
Properties LLC, successor-in-interest to
NFL Properties, Inc.,
Defendants.

Defendants.

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

DECLARATION OF DERRIEL C. McCORVEY
IN SUPPORT OF
MCCORVEY LAW, LLC'S OPPOSITION TO CHRISTOPHER A. SEEGER'S
PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND PAYMENT OF CASE
CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES

Derriel C. McCorvey declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, the following:

1. I am the founder and owner of the law firm of McCORVEY LAW, LLC. I submit this Declaration in support of McCORVEY LAW, LLC's Opposition to Christopher Seeger's Proposed Allocation of Common Benefit Attorneys' Fees (ECF No. 8447) and I adopt and I am in favor of Co-Lead Class Counsel Anapol Weiss's Proposed Alternative Methodology for the Allocation of Common Benefit Attorneys' Fees (ECF No. 8701).

2. I have served as a Court-appointed member of the Plaintiffs' Steering Committee ("PSC") throughout the course of MDL No. 2323. This Declaration is based upon my personal knowledge.

3. I am aware that other members of the PEC, including Co-Lead Counsel, and the PSC, have or will file Declarations in opposition to Mr. Seeger's unilateral fee allocation. Among this group are law firms, such as Locks Law Firm, Anapol Weiss, Girardi Keese, Podhurst Orseck, Kreindler & Kreindler, Zimmerman Reed, Pope McGlamry and Hagen, Roskopf & Earl, which have the overwhelming number of individual former player clients whose individual lawsuits were a major, if not the major factor leading to the settlement of this litigation. The very fact that almost all of the Plaintiffs Leadership counsel in this litigation oppose this allocation, its timing, scope and its effect, manifests it's incredibly selfish, unfair, jaundiced and unreasonable nature. This issue deserves greater scrutiny by the Court that involves someone other than Mr. Seeger. This Court appointed the leadership for a purpose. Now is the time that we should finally be heard, allowing us to be involved to make this allocation fair and reasonable."

4. There are two substantive problems with Mr. Seeger's unilateral fee allocation. One, it is premature, since individual contingent-fee contract issues have not been addressed and that entirety of time and expense are not accounted for in the proposed allocation. Second, it is patently unfair and appears to suggest that he alone is responsible for the results here.

5. The Settlement, which began as a Term Sheet dated August 29, 2013, included the NFL Defendants' agreement not to oppose up to \$112.5 million in common-benefit attorneys' fees, payable by the NFL Defendants. *See In re Nat'l Football League Players' Concussion Injury Lit.*, 307 F.R.D. 351, 374 (E.D. Pa. 2015). Settlement and Co-Lead Counsel Mr. Seeger, were, and have remained, silent as to whether individual contingency-fee contracts between clients and

counsel are enforceable, other than specifying that the requested 5% holdback from all awards be taken out of the amount of legal fees otherwise owed. This lack of leadership has delayed the ability of any counsel to obtain payment for the substantial work on behalf of their individual clients.

6. Despite repeated requests from members of the PSC, Mr. Seeger has utterly failed to address whether individual fee agreements are enforceable in light of the class action Settlement. Despite repeated questions from PSC members, Mr. Seeger has stalled, delayed and refused to address this issue. He failed to address this issue at the preliminary and final approval stages, and now seeks to collect \$74.5 million in class action “common benefit” fees before counsel for the thousands of injured former NFL players and their families even know whether their contingent fee agreements will be upheld.

7. Although whether individual fee agreements are enforceable was raised by the Estate of Kevin Turner in December 2016, (ECF No. 7029), that issue has not yet been addressed by the Court. Some members of Plaintiffs' PSC filed briefs supporting the enforceability of such individual contingent fee agreements. (*E.g.*, ECF Nos. 7073, 7075, 7085); however, Co-Lead Counsel Mr. Seeger has utterly refused to take a position as to the enforcement of individual fee agreements.

8. Mr. Seeger's risk, if any, of non-payment, has been minimal. First, from its very inception, MDL-2323 involved many highly regarded Plaintiffs' firms, all of which were available to contribute to common-benefit expenses and to share in the risk of non-payment. This was not a typical class action in which a single firm bears substantial risk all alone or with a small number of co-counsel. Moreover, at least since the late-August 2013 Term Sheet included \$112.5 million

in common-benefit attorneys' fees. However, the risk for non-leadership counsel with substantial numbers of individual clients has continued to-date.

9. Indeed, although Mr. Seeger had very few individual clients in MDL-2323, he made a point of waiving any claim to fees pursuant to any remaining individual retainer agreements. (*See* ECF No. 7151-2 at ¶ 98). This action fanned the flames of frustrated individual clients and their families who seek to avoid paying their individual attorneys, despite their contingent fee arrangements, in light of Co-Lead Counsel's decision to reach a class settlement of MDL-2323.

10. Law firms bearing the most risk in this litigation and settlement process – those firms representing large numbers of former NFL players and their families pursuant to individual contingent-fee agreements – are being further penalized by the 5% set-aside Mr. Seeger has requested. As co-lead counsel, Mr. Seeger unilaterally determined that this set-aside would be taken out of any existing individual attorney's fee (should such attorney's fee agreement be upheld). (ECF No. 7151-2 at ¶¶ 101-103). Mr. Seeger, whose firm only represented a handful of former players, has withdrawn from representing most all clients. (*See, e.g.*, ECF No. 16 (voluntary dismissal of individual case); 5765, 6138, 6629 (these last three are Mr. Seeger withdrawing from representation of individual plaintiffs). In contrast, any risk of Mr. Seeger not being paid was effectively extinguished when the NFL Parties agreed not to oppose or object to a petition of attorneys' fees and costs up to \$112.5 million as part of the Settlement in summer 2013.

11. Additionally, the Court has ordered the Settlement Administrator to hold back all fee amounts, pending resolution of individual contingency-fee agreement enforceability issues and issues stemming from the further complication of NFL Players (and their families) who have hired and fired different counsel through the course of MDL-2323. Thus, the risk of non-payment

continues for counsel representing individual retired NFL Players and their families, even nearly a year after the effective date of the Settlement.

12. Until approximately 2013, PSC, PEC and Co-Lead Counsel worked effectively and efficiently as a team, all with significant, defined roles, toward the resolution of our clients' head-injury claims. As negotiations continued, Mr. Seeger excluded leadership and assigned more and more work to his own firm in order to build its lodestar to the exclusion of others.

13. Since 2013, Co-Lead Plaintiffs' Counsel Christopher Seeger has dictated and strictly controlled the work that could be done in this litigation. He dictated which few counsel could actively participate in the mediation and settlement process, what each firm and their respective attorneys was permitted to do in furtherance of the common benefit, and whether work on behalf of individual claimants, even in furtherance of the Settlement, could be included as part of the common-benefit expenses. Despite repeated requests for common benefit work and to more actively participate, Mr. Seeger marginalized and minimized the involvement of all other members of the Plaintiffs' leadership, including my firm, while maximizing his (and his firm's) role in all MDL-2323 work.

14. Mr. Seeger bypassed his own Co-Lead Plaintiffs' Counsel, Sol Weiss of Anapol Weiss, and the Court-appointed Plaintiffs' Executive and Steering Committees to become the dictator over the MDL. As is demonstrated by the \$18 million-plus lodestar amount submitted by his firm, Mr. Seeger reserved the vast majority of work for himself and his firm, largely excluding even his Court-appointed Co-Lead Plaintiffs' Counsel Sol Weiss. (*See* ECF No. 8447-1 at p. 2 (listing a lodestar of \$1,857,436.00 for Anapol Weiss, the firm of Co-Lead Plaintiffs' Counsel, compared to \$18,124,869.10 for Seeger Weiss. Mr. Seeger's firm's lodestar, based on the work that he created and controlled, was 9.76 times that of his Court-appointed Co-Lead counsel's).

15. In fact, much of the work that Seeger Weiss has completed relates to issues that Mr. Seeger himself created by omitting the enforceability of individual contingency-fee agreements from the Settlement and failing to weigh in on the issue since the final Settlement was reached in 2014.

16. Indeed, Mr. Seeger has failed to hold or participate in substantive discussions with MDL-2323's PSC and PEC since 2013. There have been no leadership meetings, no leadership conference calls, and literally no leadership discussions. Mr. Seeger became a solitary dictator over MDL-2323. He has worked to ensure that his application for substantial, inflated common-benefit fees will be determined before the serious questions of individual attorneys' fees, poaching, and the public-relations nightmare of the unseemly public fight over fees further undermines the public's (not to mention our individual clients') perception of plaintiffs' counsel and the civil justice system.

17. It is unfair and inappropriate to allow Mr. Seeger to arbitrarily determine what multiplier is applied to each firm's lodestar calculation, including his purported decision to "adjust upward the lodestars of the firms that made contributions from the outset of the litigation all the way to its end" or "downward the lodestars of the firms that performed only discrete tasks here and there." (ECF 8447-2 ¶ 8). Mr. Seeger not only decided who would be permitted to perform tasks, he then decided that those he selected would be awarded above and beyond by his decision to provide an upward adjustment via a multiplier. Likewise, he penalized those firms that he did not select to work through the negotiations and settlement by awarding them only their lodestar, in the case of McCORVEY LAW, LLC and nine other firms (or, more egregiously, reducing it via a multiplier lower than 1 for four firms).

18. Mr. Seeger has provided no explanation in his declaration as to the reasoning or justification supporting the various multipliers he used in determining the total appropriate fees to be awarded to each participating law firm, including the use of a 0.75 “multiplier” to four firms’ lodestar, reducing (instead of multiplying) their actual fees and costs below the amount of actual time and expense they invested in the litigation. Of the remaining twenty (20) firms, ten (10) firms, including McCORVEY LAW, LLC, were assigned a “multiplier” of one (1) – basically only their time and expense, with no increase whatsoever for the risks undertaken or extra effort incurred to support the Settlement, while ten (10) firms received multipliers varying from 1.25 all the way up to Mr. Seeger’s own self-assigned, highest multiplier of 3.885, which raises his \$18 million dollar lodestar to a \$70 million windfall. Mr. Seeger undertook this allocation despite acknowledging that the originally submitted lodestar of \$40,559,978.60, representing 50,912.39 hours of time, subject to an overall 2.6 multiplier, for all firms’ lodestars, resulted in a total fee request of \$106,817,220.62. (*See* ECF No. 7151-2 at ¶ 78).

19. Mr. Seeger has also obtained, via Settlement, a holdback of 5% of all awards made pursuant to the Settlement, with this amount to reduce the amount otherwise payable in attorneys’ fees. He recently requested payment of some \$74.5 million in common-benefit fees and costs. (*See* ECF No. 8447-1 at page 2 of 2 (reporting Seeger Weiss’ lodestar as \$18,124,869.10, requesting a 3.885 multiplier, taking this amount to \$70,425,116.45 of the \$107.7 million fees to be allocated, and further requesting \$4,100,280 of the \$4.7 million “part II lodestar” from the 5% holdbacks).

20. Mr. Seeger contends that he, like us, “hosts frequent telephone conference calls with retired players and family members to provide updates on the Settlement,” (ECF No. 7151-2 at ¶ 52), and that he, again like McCORVEY LAW, LLC, “continues to respond to hundreds of

calls each month from Retired NFL Football Players and their families about the Settlement and its Claims Process.” (ECF No. 8447 at ¶ 20a.) Mr. Seeger included the time spent communicating with individual Retired NFL Players and their families in his common-benefit time and sought reimbursement of that time as part of his lodestar (and multiplied by 3.885 as an incentive reward). (*See id.*; ECF No. 8447-1 at p. 2 of 2; ECF No. 7151-2 at ¶ 89 (“Seeger Weiss prepared updates for Class Members and fielded phone calls to provide further information on the updates to Class Members.”)).

21. Similar to Mr. Seeger’s statement of the work his firm has done in responding to “hundreds of calls each month from Retired NFL Football Players and their families about the Settlement and its Claims Process,” McCORVEY LAW, LLC has fielded many similar calls, with the 50 players that we currently represent, as well as similar calls with former clients, many of whom were “poached” by other counsel. We have also communicated extensively with all of our clients via email, conference call, and in-person meetings.

22. Since the Settlement became effective in January 2017, McCORVEY LAW, LLC attorneys have spent significant hours every month working with former players and their families on the registration process by: researching evidence of play, gathering employment information, and registering former NFL players, their representatives and their family members for the settlement; working with former players to submit BAP appointment requests to Garretson, working on a daily basis with Garretson on issues involving the scheduling process; and gathering medical records and documentation from clients who received a Qualifying Diagnosis prior to the Effective Date to submit claim packages on their behalf, and respond to myriad deficiency notices received regarding same.

23. This work performed by McCORVEY LAW, LLC is the same work being performed by Seeger Weiss in the implementation and support of the Registration and BAP process, but McCORVEY LAW, LLC will not be reimbursed for this work through common-benefit fees or through the 5% set-side from any of their clients' awards that Mr. Seeger has requested. (*See* ECF No. 8447 at ¶ 20a (explaining that Seeger Weiss has been "responding to hundreds of calls from Retired NFL Football Players and their families" and that it "continues to respond to hundreds" of such calls every month "about the Settlement and its Claims Process."))

24. In the course of working with our individual clients, McCORVEY LAW, LLC has incurred significant hours of additional attorney time, none of which was permitted to be included in the common-benefit fee application. Mr. Seeger has acknowledged that Plaintiffs' Counsel, other than Co-Lead Class Counsel, "have devoted hundreds of hours to communicating with Retired NFL Football Players and family members." (ECF No. 7151-2 at ¶ 51).

25. Members of the PEC and PSC, however, were specifically instructed *NOT* to include any work on behalf of any individual class member, including communications with such individual class members, in their time detail submitted in support of the common-benefit fee application. Accordingly, McCORVEY LAW, LLC, and presumably no member of the PSC or PEC – with the notable exception of Mr. Seeger – submitted their time for their substantial hours communicating and working with individual former NFL players or their families as part of the common-benefit fee and expenses application.

26. Rather, McCORVEY LAW, LLC and other leadership counsel who are members of the PSC or PEC, save Mr. Seeger, are not receiving any common-benefit fees for any of this work.

27. In addition to my general PSC work in MDL-2323, I was an active member of the Communications Committee during the course of the litigation. Although Mr. Seeger's proposed fee allocation appears to minimize the value contributed by the communications committee, he previously recognized the immense value in the regular work undertaken, before and after the Settlement was announced, and continuing to-date, to provide full and complete information to all parties, the broader player community, and the public, regarding all relevant factual, medical and legal issues implicated by MDL-2323. (*See* ECF No. 7151-2 at ¶ 33). Such work included my work on the Communications Committee and my multiple interviews with national news media, including Bloomberg News.

28. In addition to being a member of the Communications Committee, I was also appointed to the Discovery/Document Repository Committee and the Third Party Discover/Privilege (NFL teams and colleges) Committee.

29. In addition to our firm's work on the PSC, McCORVEY LAW, LLC currently represents 50 individual clients – former NFL players – pursuant to individual retainer agreements. Our individual clients are also class members eligible to participate in the settlement of the class action under MDL No. 2323.

30. My firm formerly represented many more than our current 50 former NFL players and players' families in MDL-2323. Many of our clients were "poached" by other counsel, who, given the Settlement agreement and Mr. Seeger's failure to support enforcement of individual contingency-fee agreements, apparently told our (now former) clients that they would handle their claims for a lower contingency fee.

31. McCORVEY LAW, LLC undertook significant work in support of the Settlement. McCORVEY LAW, LLC was in constant communication not only with existing clients, but

former teammates and friends who called upon Derriel McCorvey. Derriel C. McCorvey kept them abreast of the litigation, sold the settlement to them and updated them on the post-settlement claims administration process. Derriel McCorvey utilized his unique background having been a former NFL player to sell the deal to his peers who relied upon and trusted his judgment. Derriel McCorvey worked tirelessly to convince former players that the settlement was in their best interests despite third parties trying to convince players to opt out of the settlement agreement. The real force behind the settlement of this case was the number of former NFL players who individually stepped up against the NFL. The firms with the largest number of clients seem to be overlooked in Mr. Seeger's proposed fee process. Had it not been for firms like ours, there would not have been a critical mass to cause sufficient pressure on the NFL to reach a settlement. We were instrumental at that time, but are apparently forgotten now.

32. Despite McCORVEY LAW, LLC's significant, continuing contributions to the prosecution of MDL-2323 and support of the Settlement, Mr. Seeger has proposed a so-called "multiplier" of 1 -- effectively no multiplier at all -- to McCORVEY LAW, LLC's common-benefit lodestar (\$198,780.00), in his apportionment of common-benefit fees.

33. Indeed, it remains uncertain as to whether McCORVEY LAW, LLC (or any other firm or counsel representing individual Former NFL Players or their families) will ever be paid for their work on behalf of individual clients. In addition to the substantial common benefit work that McCORVEY LAW, LLC has performed, McCORVEY LAW, LLC has invested substantial amounts of attorney time and resources on behalf of their individual clients/class members pursuant to their individual contingent fee agreements. None of this time or expense will be compensable unless this Court rules that individual client fee agreements are enforceable. Even if

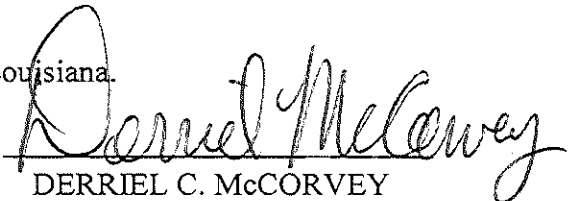
the Court were to enforce individual client contingent-fee agreements, McCORVEY LAW, LLC would only be compensated for those individual clients/ class members who obtain a recovery.

34. Mr. Seeger's suggested allocation of common benefit attorneys' fees is premature and inappropriate until this Court addresses the individual contingent fee contract enforceability issue. At this point in time, Mr. Seeger seeks to recoup a substantial windfall for himself, while leaving remaining PSC members and other counsel representing individual clients at a substantial risk that they may never recover anything for the many thousands of hours of time and substantial expense invested for individual client claims.

35. Furthermore, there is absolutely no reason why every PSC member firm should not have been designated as class counsel to administer the settlement in the future. There is no logical explanation for Mr. Seeger's actions in only selecting six (6) PSC member firms to the exclusion of the remaining seventeen (17) PSC member firms. The PSC member firms designated as class counsel are Anapol Weiss, Levin Sedran & Berman, Locks Law Firm, NastLaw, Pohurst Orseck and Seeger Weiss. The remaining PSC member firms, including McCORVEY LAW, LLC, were excluded as class counsel.

36. Mr. Seeger's proposed allocation is void of fundamental fairness and equity. The actions of this one attorney only fosters the public's negative perception of attorney greed. Just as the Court has an independent duty to the class and public to ensure that amounts of common benefit fees are reasonable, the Court has a duty to the class counsel to apply the same principle when considering the allocation amongst them.

Executed on October 27, 2017, at Lafayette, Louisiana.


DERRIEL C. McCORVEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

**IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
LITIGATION**

No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

Hon. Anita Brody

DECLARATION OF LANCE H. LUBEL

Pursuant to 28 U.S.C. § 1746, I, Lance H. Lubel, hereby declare and state the following:

1. Introduction. My name is Lance H. Lubel. I am an attorney licensed to practice in the State of Texas and have been so licensed since 1991. I am a founding partner of Lubel Voyles LLP and counsel to numerous former NFL players involved in this MDL, including the “Alexander Objectors.”

2. Purpose. I am submitting this Declaration in response to the Court’s October 11, 2017, Order regarding counter-declarations to the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys’ Fees (“Seeger Declaration”).

3. Pending Motions and Objections. I have filed several motions related to requests for attorneys' fees awardable under the settlement agreement. These motions, which remain pending, include the following:

- (i) *Motion for Entry of Case Management Order Governing the Application for Attorneys’ Fees, Cost Reimbursement and Set-Aside* (ECF 7176). This motion was filed February 21, 2017. The primary purpose of the motion was to obtain an order establishing “the appropriate time [for motions for an award of attorneys fees and reasonably incurred costs] to be determined by the Court”, as stated in Section 21.1 of the Settlement Agreement. In the motion, I noted that applications for fees exceeded the \$112.5 million agreed to by the NFL; that Co-Lead Class Counsel was seeking the entirety of the \$112.5 million; and that the Court is facing complicated questions in connection with fee applications, *e.g.*, the proper fee-analysis methodology, the proper methodology for establishing the value to the class, the proper method of review by the Court, whether a fee award is premature, and the

propriety of a proposed set-aside (*Id.* at 3-6). Accordingly, I requested the Court establish the Section 21.1 deadline for fee applications and enter a Case Management Order scheduling objections, requests for information among counsel, and briefing. The intent was to establish a process pursuant to which the Court could vet the reasonableness of all fee requests through careful consideration of supportive evidence and in light of any objections (*Id.* at 6). Neither Co-Lead Class Counsel nor any other party filed a response to the motion. The motion remains pending.

- (ii) *Motion for Leave to Serve Fee-Petition Discovery.* (ECF 7534). This motion was filed April 21, 2017. Co-Lead Class Counsel Responded on May 5, 2017 (ECF 7606, p. 15). In the motion, I submitted that the Court has insufficient information to perform the Third Circuit’s “thorough review” of Co-Lead Class Counsel’s fee application for an award of \$112.5 million and an additional 5% from every Class Member. For that reason, I requested leave to serve 19 requests for production under Fed. R. Civ. P. 34 seeking information supporting the requested award. To date, the Court has not ruled on the motion.
- (iii) *Motion to Compel Compliance with Case Management Order No. 5* (ECF 8396). This motion was filed September 20, 2017. Co-Lead Class Counsel Responded on October 4, 2017 (ECF 8440), and a reply was filed October 12, 2017 (ECF 8449). By this motion, I asked the Court to compel counsel who intend to seek attorneys’ fees and expense reimbursements to file the Quarterly Reports contemplated by CMO 5, together with the underlying summary time and expense report forms. Through CMO 5, which was entered five (5) years ago, the Court established a fee and expense protocol that set forth compensable categories of fees and expenses, required contemporaneously record-keeping, and quarterly reports be submitted to the Court (ECF 3710). The Court stated the purpose of CMO 5 was to “guide the payment of fees and expenses to attorneys performing common-benefit work” and “help ensure this matter is efficiently prosecuted for the benefit of former-player plaintiffs without unnecessary duplication or undue costs or fees). Now, the Court is faced with Co-Lead Class Counsel’s request for millions in fees and expenses, but has no basis upon which to ensure Co-Lead Class Counsel satisfied those objectives because Co-Lead Class Counsel does not want the subject reports and data made public. This motion, too, remains pending.

Prior to the Court ruling on Co-Lead Class Counsels’ application for fees or their proposed allocation, I respectfully request the Court rule on the above-referenced motions.

4. I have also filed responses and objections to Co-Lead Class Counsels’ fee application, as well as the evidence offered in support of their thereof:

- (i) *Response in Opposition and Objections to Co-Lead Class Counsel’s Petition* (ECF 7354, 7355). This response/objection was filed on March 27, 2017. At that time, I noted that Co-Lead Class Counsels’ application—seeking \$112.5 million in fees and expenses, a bonus, and future fees—was premature, given that no settlement class member had received any compensation under the settlement (*See, e.g.*, ECF 7355 at 11-12, 15-19). I also objected

on the basis that the application is unsupported by evidence and based on speculative data and flawed methodology regarding the “size of the fund” and the “number of persons benefited” (*See id.* at 12-13, 30-36, 47-52). For example, I noted Co-Lead Class Counsel’s failure to submit reliable data supporting the forecasted compensable diseases under the settlement, including the fact that there is no published literature or research on the non-terminal neurocognitive disorders “Level 1.5” and “Level 2”—creatures of the settlement—even though those “qualifying diagnoses” make up almost one-half of the projected beneficiaries of the settlement (*Id.* at 35). I also submitted evidence from an economist, Dr. Kenneth G. McCoin, demonstrating that the “percentage of the fund” requested as a fee by Co-Lead Class Counsel is approximately 23% of the present value of the alleged fund, not 9% as claimed by Co-Lead Class Counsel (*Id.* at 38-40). And, I lodged specific objections to the declarations submitted in support of Co-Lead Class Counsels’ application, as well as objections to the proposed 5% set-aside (*Id.* at 53-67).

- (ii) *Response and Objection to Supplemental Evidence Offered in Co-Lead Class Counsels’ Omnibus Reply* (ECF 7533). This response/objection was filed April 21, 2017 in connection with new evidence offered by Co-Lead Class Counsel in their omnibus reply brief (ECF 7464). In their reply, for example, Co-Lead Class counsel offered a new, revised analysis from Dr. Thomas Vasquez regarding the purported value of the biggest component of the settlement, the Monetary Award Fund, or MAF (*See id.* at 18-19; Ex. JJ (“An Updated Analysis of the NFL Concussion Settlement”). In the response, I noted Dr. Vasquez’s revised analysis suffers from several analytical gaps and provides no basis to value the MAF (*See, e.g.,* ECF 7533 at 1-4). For example, in his revised analysis Dr. Vasquez claimed to be able to compute the probability that a former NFL player will contract “each one of the compensable injuries through an epidemiological risk equation.” Dr. Vasquez, however, has not actually performed an “epidemiological risk equation” for Level 1.5 or Level 2 because there is no epidemiological data for Level 1.5 or Level 2 Qualifying Diagnoses. These diagnoses are creations exclusively of and defined entirely by the settlement. Dr. Vasquez’s estimated rates of incidents are based on dementia studies, which he used as a surrogate or a “proxy” to Level 1.5 and Level 2. But, as noted in the Declaration of Jamshid Lotfi, MD., which I attached to the response/objection, the diagnosing criteria for dementia and Level 1.5 or Level 2 are “materially different,” and the dementia studies are not reliable sources for predicting how many former players will have Level 1.5 or Level 2 diagnosis (ECF 7533, at Ex. A, ¶¶ 4-5). Finally, I also lodged specific objections to the supplemental and additional declarations submitted by Co-Lead Class Counsel (ECF 7533 at 7-10).
- (iii) *First Supplement in Support of the Alexander Objectors’ Objections to and in Opposition to Co-Lead Class Counsel’s Petition* (ECF 8395). This supplemental objection adopted by reference the June 15, 2017 Status Report (ECF 7827)—the most recent such report stating only two (2) claims had been approved (but not funded)—as evidence that the guess about the size of the MAF is both premature and unreliable. Co-Lead Class Counsel’s response

was filed October 4, 2017 (ECF 8440, at 6),¹ and a reply was filed on October 12, 2017 (ECF 8449).

Prior to the Court ruling on either Co-Lead Class Counsels' application for fees or their proposed allocation, I respectfully request the Court rule on the above-referenced objections.

5. Propriety of the Requested Fee Award and Allocation. In short, and for the reasons briefed in detail in the above-referenced pleadings, which are incorporated herein by reference, it is my opinion that it is premature for the Court to determine either the total amount of attorneys' fees to be awarded or the proper allocation thereof, given Co-Lead Class Counsels' failure to (i) establish the total value of the settlement, (ii) demonstrate with reasonable particularity the total number of the class members that will benefit from the settlement, and (iii) demonstrate that the fee requested—\$108,035,097² *plus* 5% of every class member's settlement (or approximately \$45,000,000 using Co-Lead Class Counsels' math)³—is reasonable.⁴ The forecasts and projections regarding the size of the MAF provided by Co-Lead Class Counsel and the NFL Parties are speculative and unreliable (*See, e.g.*, ECF 7533 and Ex. A). The percentage of fees relative to the total value advanced by Co-Lead Class Counsel is approximately 23% rather than the 9% claimed by Co-Lead Class Counsel (*See, e.g.*, ECF 7355 and Ex. A).⁵ And, if the Court approves

¹ In their response, Co-Lead Class Counsel complained I was relying on a "three month old" report. That report, however, was the only report Co-Lead Class Counsel filed. In fact, I requested updated claims processing information by email from Chris Seeger and Sol Weiss on September 20, 2017 and October 19, 2017, but received no response. *See* Exhibit A.

² ECF 8447 at 5.

³ ECF 7355. That is, \$45 million for relatively risk-free post-settlement administrative work.

⁴ Reasonableness is the touchstone of a fee award. Reasonableness applies to both the size of fund, as well as the allocation therefrom. *In re Agent Orange Prods. Liab. Lit.*, 818 F.2d 216, 223 (2d Cir. 1987).

⁵ 23% is clearly excessive in comparison to other fee awards. For example, Brian T. Fitzpatrick, who submitted a declaration in support of Co-Lead Class Counsels' proposed allocation in this

Co-Lead Class Counsels' fee application, the fee award would be almost double what the Class Members have been paid as of October 4, 2017 (ECF 8440, at 7 and Ex. 1).⁶ See e.g. *Int'l Metals Corp. v. Waters*, 530 U.S. 1223, 1224 (2000) (O'Connor, J., concurring in denial of petition for certiorari) (noting that once the claims were ultimately paid from the reversionary fund, the fee award approved by the District Court was more than twice the amount of the class' actual recovery but, because the issue was waived, the Court could not reach the question whether there must at least be some rational connection between the fee award and the amount of the actual distribution to the class).

6. As I have stated in various filings referenced above, Co-Lead Class Counsel are rushing the Court to rubber-stamp an enormous fee—aggregately, more than \$150 million—before a track record of success has been established. The “degree of success,” however, is “the most critical factor” in determining the reasonableness of a fee award.” See *In re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico*, on April 20, 2010, 2016 WL 6215974, *1086 (E.D. La. Oct. 25, 2016) (“*Deepwater Horizon*”), citing, e.g., *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). “Success,” in this context, is not determined solely by the gross amount of the recovery, but also “by the number of individuals who benefit from the class settlement” and “the degree to which it provides them full compensation for their injuries.” *Id.*, citing, e.g., *In re Vioxx*, 760 F. Supp. 2d

case, testified in *Deepwater Horizon* that the average and median fee awards in “super-mega-fund” cases (those with a recovery exceeding \$1 billion) were 9.92% and 7.4%, respectively. See *In re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico*, on April 20, 2010, 2016 WL 6215974, *1083 (E.D. La. Oct. 25, 2016) (“*Deepwater Horizon*”); see also *In re Vioxx Products Liab. Litig.*, 760 F. Supp. 2d 640, 662 (E.D. La. 2010) (concluding 6.5% of \$4.85 billion settlement was reasonable); Eldon E. Fallon, *Common Benefit Fees in Multidistrict Litigation*, 74 La. L. Rev. 371, 385 (2014) (“[I]n settlements between \$190 million and \$900 million, fees between 10% and 12% have been allowed”).

⁶ The \$75 million Seeger seeks for his firm alone exceeds the amount paid to the class members as of October 4, 2017.

at 657-58. While the alleged “\$1+ billion” settlement in this case might look good on paper to some, the number of class members who will actually benefit from the settlement remains to be seen. Setting aside the flaws in Co-Lead Class Counsels’ estimates and projections, according to the Claims Administrator, of the 20,000+ registrations, only 104 Notices of Monetary Awards have been issued (ECF 8440-1).⁷ To put that and Co-Lead Class Counsels’ fee application in context, Class Counsel in *Deepwater Horizon* waited more than four (4) years after settlement—and after \$9 billion (on 133,000+ claims) of a \$13+ billion recovery had been paid—before applying for their \$555 million fee (4.3%). *See Deepwater Horizon*, 2016 WL 6215974 at *1051, 1081-82, 1086.⁸ Similarly, in *Vioxx*, the issue of common benefit fees was decided *after* Merck

⁷ The NFL data submitted to Special Master Golkin forecasted 665 *paid* claims in year 1. *See* 6168-6 at 2, 6168-7 at 4. Thus, less than 15% of the number of claims the NFL forecasted would be paid in year 1 have been approved. Three of my firm’s clients filed claim packages almost four (4) months ago. Although no deficiencies in their claims packages, none have received a determination other than “eligible” for a monetary award. One has been waiting assignment to a panel member of the AAP for over 105 days, one was recently assigned to a panel member after waiting approximately 90 days, and another has been awaiting assignment for about 45 days. It is conceivable these three (3) claims will take more than six months to process after filing complete claim packages.

⁸ Unlike this case, where no depositions were taken, no formal discovery was completed, and no substantive issue had been ruled upon at the time of settlement’s announcement, *Deepwater Horizon* involved an “immense amount of work,” including extensive discovery involving hundreds of deposition and the review of millions of pages of documents; trials; appeals, *etc.* Indeed, in that case, counsel expended approximately 527,000 hours of common benefit work in connection with hundreds of fact and expert depositions; reviewing over 90 million pages of documents, housed in 15,500 square foot depository with 70 dedicated computer workstations; two trials and 90 appeals to the 5th circuit; and numerous other matters completed for the common benefit of the class. *See id.* at *1055-58, 1078, 1085. “Many common benefit attorneys ... move[d] to New Orleans and devote[d] their entire practice to [the] MDL for years.” *Id.* at *1085.

Moreover, in that case, the more than \$20,000,000 in “hold-backs” (like the requested 5% set-aside requested here) were ultimately returned such that no business, individual, or local governmental authority (nor their own individually-retained attorneys) were required to make any common-benefit cost contribution or pay any common benefit fee. *Id.* at *1060.

had paid out more than \$4.3 billion to over 32,000 claimants. *In re Vioxx*, 760 F. Supp. 2d at 646, 658.⁹

7. Even if the Court is inclined to award some fee at this time, the process by which the attorneys' fee application process is currently proceeding places the cart before the horse. The Court should first determine the appropriate aggregate award and then determine the appropriate allocation. *See, e.g., Deepwater Horizon*, 2016 WL 6215974, at *1052-53, 1080; *see also* Fallon, 74 La. L. Rev. at 387 (“After the total common benefit fund is established, a mechanism or procedure must be devised to determine the proper distribution of the fund...”). But here, Co-Lead Class Counsel has already allocated the entirety of the \$112.5 million available under the settlement—dedicating at least \$75 million to allocator¹⁰—before the Court has (i) determined the value of the benefit to the class, (ii) determined a benchmark percentage to be applied, if appropriate, and/or (iii) applied a lodestar analysis or cross-check on the reasonableness of the percentage method.

⁹ Again, unlike this case, the *Vioxx* litigation involved extensive pre-trial litigation, including document discovery, expert discovery, depositions, motion practice, trials, etc. *Id.* at 643-44; *see also* Charles L. Becker, *How Not to Manage A Common Benefit Fund: Allocating Attorneys' Fees in Vioxx Litigation*, 9 Drexel L. Rev. 1, 5 (2016).

¹⁰ Here, Seeger alone is deciding which attorneys/firms get paid and how much. In other words, it is “the fox who (is) recommend[ing] how to divvy up the chickens.” *In re: Diet Drugs*, 401 F.3d 143, 173 (3d Cir. 2005) (Ambro, J., concurring) (analyzing the “procedure by which allocation [is] rendered”). In other “super-mega-fund” cases, however, allocations have been determined by committee, with special master oversight. For example, in *Deepwater Horizon*, allocation of fees was subject to a committee made up of several law firms. Then, a special master made recommendations to be considered by the trial court. And even then, “the appointment of a committee does not relieve the trial court of its responsibility to closely scrutinize the attorneys’ fee allocation, especially when the attorneys recommending the allocation have a financial interest in the resulting awards.” *In re High Sulfur Content Gasoline Prods. Liab. Lit.*, 517 F.3d 220, 227 (5th Cir. 2008).

8. With respect to the lodestar analysis, whether it should be used to calculate the fee or as a cross-check, I have repeatedly sought from Co-Lead Class Counsel the data underlying the 50,000+ hours claimed to have been spent for the benefit of the class. “Such records are an important factor in determining the appropriate total amount of common benefit fee, as well as the proper distribution of the common benefit fee among those who actually performed the work that produced the result achieved.” Fallon, 74 La. L. Rev. at 387. Co-Lead Class counsel has at least acknowledged that a loadstar cross-check of the percentage-of-the-fund method is “sensible” (ECF 7151, at 52). At the same time, however, they have refused to produce the reports and time and expense summaries ordered to be contemporaneous maintained by CMO 5 (ECF 3710).¹¹ Nor have they produced the submissions by other counsel seeking fees that they solicited prior to their fee application. But this is information the Court should have in conducting its “thorough review” of an application for more than \$100 million in fees. Indeed, courts should closely supervise the actions of court-appointed counsel to ensure that decisions around the size and distribution of common-benefit fees are transparent, jurisprudentially sound, and fundamentally fair. Charles L. Becker, *How Not to Manage A Common Benefit Fund: Allocating Attorneys’ Fees in Vioxx Litigation*, 9 Drexel L. Rev. 1, 3 (2016).

9. With respect to the percentage-of-the-recovery method, if the Court believes it is appropriate, a reasonable benchmark percentage should not exceed the percentage approved in *Deepwater Horizon* (4.3%) or *Vioxx* (6.5%) as the effort and risk undertaken in this matter is a far

¹¹ Compare this to *Deepwater Horizon* where common benefit attorneys tracked time/expense data on a monthly basis and submitted said data to a court-appointed CPA and a fee committee for auditing. *Deepwater Horizon*, 2016 WL 6215974, at *1077-78; *see also* Fallon 74 La. L. Rev. at 382 (“Those attorneys who are seeking or plan to seek common benefit fees are expected to contemporaneously report their hours, the nature of the work performed, and the expenses incurred for common benefit work to the court-appointed CPA”).

cry from what the record shows in those matters. In order to adequately align common benefit attorneys' with the class membership their fees should be entirely based on claims paid. And, the percentage approved by the Court should not exceed 6.5%.

10. The 5% set-aside fee, which Co-Lead Class Counsel seek to recover from every monetary award even after receiving \$112.5 million, should be rejected. Notably, the 5% set-aside was not part of the attorneys' fee provisions in the January 6, 2014 settlement agreement executed by Class Counsel and the NFL Parties. It popped into the agreement for the first time in the June 25, 2014 revised agreement. Neither Class Counsel nor the NFL Parties provided any explanation for why up to \$112.5 million in attorneys' fees was satisfactory in January but considered approximately \$45,000,000 light a mere six months later. Even based on the speculative projections of the claims to be paid under the settlement, the \$112.5 million attorneys' fee fund or some portion thereof, if conservatively invested, will be more than sufficient to pay reasonable fees over the lifetime of the settlement. The Court, therefore, should reject any set-aside.

11. While an award of attorney fees is premature at this time, if the Court is inclined to award some portion or all of the \$112.5 million available under the settlement, then my firm's contribution to the class, although ignored in Co-Lead Class Counsels' application and the Seeger Declaration, should be compensated. On or about July 25, 2016, Seeger sent me a letter asking for our common benefit time and expense information to prepare petition to be filed with the Court. He required more information from submitting lawyers than he has supplied to the Court. Although the letter stated that he would follow up if he needed anything else, I never heard back from him after providing his office with the requested information. In fact he left my law firm out of the fee application and subsequent allocation despite his request for the information and the efforts and results we helped achieve. Our law firm has devoted well over 1,000 hours attempting to

improve the terms of the settlement and resolve differences between class counsel and objectors, and advocating for a common benefit fee system that would be aligned with the class members best interest. My firm's contributions to the class include but are not limited to the following:

- (i) At the request of Class Counsel, I attended meetings in Florida (February, 2015) and New York City (April 22, 2015) in an effort to resolve objections to the settlement. Prior to attending such meetings, I communicated with most if not all of the counsel representing objectors in an effort to prioritize the objections and secure authority to negotiate with Class Counsel.
- (ii) I had communications with Co-Lead Class Counsel about the January 6, 2014 version of the settlement concerning the injury definitions for Level 1.5 and 2.0 Neurocognitive Impairment.
- (iii) Following the first meeting in New York on January 20, 2014, I began a concerted press with Co-Lead Class counsel on the need to address my observations about the Settlement diagnostic criteria.
- (iv) Specifically, I pointed out that the first version of the settlement signed by the parties and submitted to the Court on January 6, 2014 arguably required class members diagnosed outside the BAP, including those diagnosed before the settlement had even been announced, to adhere to the diagnostic criteria for Level 1.5 or 2 including the neuropsychological protocol annexed in Exhibit 2.
- (v) Co-lead Class Counsel advised a group of lawyers that the intent of the settlement would not require those class members diagnosed before the settlement including diagnoses before the effective date to be retested or re-examined under the specific diagnostic criteria referenced in the settlement. However, that intent was not reflected in the plain language of the Settlement.
- (vi) I committed to an in-depth study of the Settlement provisions pertaining to monetary awards for Qualifying Diagnosis for Level 1.5 and Level 2.0 in an effort to ensure that this ambiguity would not be a detriment to class members.
- (vii) The need for clarity was important for two principal reasons: First, Co-Lead Class Counsel Claimed that the majority of class members were expected to be in these categories, a expectation borne out by subsequent forecasts of participation. Indeed, according to the data submitted by Co-Lead Class Counsel, almost half of the former NFL Players' claims are not ALS or CTE or Parkinson's or Alzheimer's diagnosis. Instead, they are Level 1.5/Level 2. See 6167, Table 2-1.
- (viii) Second, Level 1.5 and 2.0 Neurocognitive Impairment are not medical diagnoses known or used by the medical community before this settlement. Therefore, Exhibit 2 to the

January Settlement setting forth a settlement-neuropsychological protocol was not generally used by the relevant medical community.

- (ix) As such and as I explained to Co-Lead Class Counsel, the Level 1.5 and 2.0 qualifying diagnosis would never appear on any medical record of a former NFL Player because it does not appear in any medical textbook or medical school curriculum – these diagnoses are creatures of and defined by the Settlement alone. Therefore, because a former NFL Player could only qualify for compensation by submitting a diagnosis “in accordance with the testing protocol annexed in Exhibit 2” or “diagnosis outside the BAP consistent with the diagnostic criteria for level 1.5,” the plain language of the Settlement criteria was virtually self-defeating.
- (x) On several occasions, I asked Co-lead Class Counsel to point me to any provisions in the agreement that would unambiguously protect the class members from this strict application of the terms of the Settlement. He could not do it.
- (xi) The June, 2014 Settlement included revised language directed specifically to my plain language concerns. First, it was broadened to include “evaluation and evidence generally consistent with the diagnostic criteria.” Second, the revised Settlement included 6.4(b): “For the avoidance of any doubt, the review of whether a Qualifying Diagnosis is based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions) does not require identical diagnostic criteria, including without limitation, the same testing protocols or documentation requirements.”
- (xii) Finally, the revised Settlement, pp. 31 – 32, includes a significantly expanded section on Qualifying Diagnoses that acknowledges different categories regarding who can issue a qualifying diagnosis for Level 1.5 and 2.0 based upon the timing of the diagnosis. These changes are responsive to--though not wholly curative of--the Level 1.5 and Level 2.0 concerns that I raised.
- (xiii) The Court then scheduled a Fairness Hearing, directed final submissions for October, 2014 and argument in November, 2014. The Court directed counsel for the Faneca Objectors, Steven Molo, to coordinate Objectors arguments. My firm filed objections to the revised Settlement (ECF 6237) pointing out the many concerns with the settlement, including the refusal of the NFL or Co-Lead Class Counsel to supply the Class Members with any of the underlying and supporting documents. And, at the request of Steven Molo, I made a presentation at the Fairness Hearing.
- (xiv) When the Court approved the Settlement, my firm and Kline & Spector filed an appeal on behalf of the Alexander Objectors. Chip Becker on behalf of our clients coordinated the argument between the appellants counsel and argued part of the appeal.
- (xv) Since the Effective Date of the settlement, my law firm has filed motions and responsive pleadings to assist the Court in its duty to award reasonable fees and expenses to the attorneys seeking common benefit fees only after it has information necessary to evaluate the requests including the degree of success of the settlement.

- (xvi) In summary, then, from the time of the August, 2013 Term Sheet to the present, my firm has expended many hours of effort on behalf of the former NFL Players and incurred expenses in the course of furthering the business of the class. Our efforts in that regard were commensurate with, if not greater than, those recognized by Co-Lead Counsel with respect to Corboy Demetrio (ECF 8447 at 13). On many fronts, my firm worked together with Corboy & Demetrio on objections, the fairness hearing, and efforts to resolve objections both before and after the fairness hearing and before the appeal.
- (xvii) Using the blended fee average of about \$450/hour approved in *Deepwater Horizon*, my firm's common benefit fee to date would be at least \$450,000 plus expense reimbursements of \$10,936.19 mostly consisting of meetings to NYC, Miami and Chicago at the request or suggestion of Class Counsel. Based upon my experience, \$450/hour is consistent with the rates charged by law firms engaged in the type of litigation that my law firm does and is reasonable for the services performed. That rate is far below the rates charged by others seeking fees in this litigation. Should the Court require further detail for a lodestar cross-check, I am pleased to provide it. See *In re Rite Aid Corp. Sec. Litig.* 396 F.3d 294, 306-07 (3d Cir. 2005).

12. Finally, although he is claiming entitlement to \$70+ million plus 5% of each monetary award, Seeger has taken positions that are unfavorable to the class. Based on recent filings, the Claims Administrator, at the recommendation of Seeger, is requiring corroborating documentation of functional impairment prior to the qualifying diagnosis examination. In other words, the claims office is requiring proof that the functional-impairment records or third-party affidavit was provided to the qualified physician "before" the subject exam. This is against the express provisions of the settlement for a number of obvious reasons: (i) "corroborated" as used in 1(a)(iii) means "after" the player has exhibited functional impairment; (ii) there is no timing element (before or after) in the criteria; (iii) claims office documentation provided to MAF and BAP doctors allow for this information within 14 days of the exam; and (iv) for players diagnosed outside the BAP, section 6.4(b) does not require "identical diagnostic criteria," the same "testing protocols," or "documentation requirements."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of October, 2017.

/s/ Lance H. Lubel

Lance H. Lubel,

Counsel for the Alexander Objectors

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civil Action No. 2:14-cv-00029-AB

Plaintiffs,

V.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**FANCA OBJECTORS' RESPONSE TO
THE DECLARATION OF CHRISTOPHER A. SEEGER PROPOSING AN
ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES AND EXPENSES**

At the November 19, 2014 fairness hearing, Co-Lead Class Counsel defended the settlement they had negotiated with the NFL: The class, they told the Court, “‘would be unlikely to have obtained more money and benefits without going through years of discovery and trial.’” Dkt. 6463 at 40:1-3. They lauded the agreement as a “landmark and historic settlement . . . result[ing] [from] many months of intense, hard fought, arm’s-length negotiations.” *Id.* at 7:19, 9:11-12. And they said that they had “obtain[ed] the best overall deal we could for plaintiffs.” *Id.* at 39:19-20.

While it *was* the “best overall deal” that Co-Lead Class Counsel could negotiate, it was *not* the best deal that the NFL would agree to. Based on the substantial efforts of the Faneca

Objectors, the class got a much better deal. The Final Settlement incorporated four key elements of the Faneca Objection:

- credit for play in NFL Europe;
- uncapping the BAP Fund to guarantee a baseline assessment for every eligible class member;
- an expanded scope of the Death with CTE qualifying diagnosis; and
- elimination of the \$1,000 appeal fee in cases of financial hardship.

The benefit of those improvements has been fairly valued at more than \$120 million.

In addition to enhancing the benefit, the Faneca Objectors rendered a valuable service to the Court and to the class in testing the settlement – which Co-Lead Class Counsel negotiated without having done any discovery – through vigorous advocacy. In total, counsel for the Faneca Objectors devoted more than \$4.3 million in time and expenses in fighting for – and achieving – a better deal.

But Co-Lead Class Counsel, who spent substantial time battling the Faneca Objectors (and, fortunately for the class, did not succeed), now contend that the Faneca Objectors’ efforts “did not yield any benefit for the Settlement Class certified by the Court.” Dkt. 8447 at 13. They allocate a meager \$150,000 in common-benefit attorneys’ fees to counsel for the Faneca Objectors and at the same time dole out millions of dollars to various lawyers – many of them double-dippers – who appear to have done little or nothing to help the class. That is neither fair nor reasonable.¹

¹ This Court’s Order directed Co-Lead Class Counsel only to submit a “proposal for the allocation of lawyers’ fees among class counsel.” Dkt. 8367. But Co-Lead Class Counsel took it upon themselves to allocate fees to counsel for objectors, who successfully opposed them in this litigation.

ARGUMENT

I. The Faneca Objectors’ Efforts – Which Improved the Settlement by Over \$120 Million – Warrant Far More Than Co-Lead Class Counsel Allocated

The settlement that Co-Lead Class Counsel submitted for approval on June 25, 2014 (the “Revised Settlement”) – which had already been improved once at the direction of this Court – was substantially inferior to the settlement this Court ultimately approved (the “Final Settlement”). *See* Dkt. 7550 at 3-4. Most importantly:

- Where the Revised Settlement provided no eligible-season credit for seasons played in NFL Europe, the Final Settlement did, increasing monetary awards and making 2,300 class members who played *only* in NFL Europe eligible for the Baseline Assessment Program (“BAP”). Dkt. 7070-1 at 17-18, 22-26.
- Where the Revised Settlement risked exhaustion of the BAP Fund before every eligible player received a baseline assessment, the Final Settlement guaranteed an assessment for every eligible player. *Id.* at 17-18.
- Where the Revised Settlement provided a preliminary-approval cut-off date for Death with CTE, the Final Settlement extended that deadline to the date of final approval, *id.* at 17-18, making over 100 additional class members eligible for a Death with CTE payment, Dkt. 7070-2 Ex. 12.
- Where the Revised Settlement imposed a \$1,000 fee to appeal a claim determination in all instances, the Final Settlement relaxed that requirement in cases of financial hardship. Dkt. 7070-1 at 17-18, 27.

Thus, *after* Co-Lead Class Counsel had done the very best they could do, the settlement's benefits were extended to some 2,300 additional class members who played only in NFL Europe.² *After* Co-Lead Class Counsel had done the very best they could do, the limitations on the BAP Fund were lifted so every eligible player could get an assessment. And *after* Co-Lead Class Counsel had done the very best they could do, the Death with CTE benefit was expanded and the appeal fee was eliminated for the many former players facing financial hardship. *See* Dkt. 7070-1 at 22-26.³

These improvements – which resulted directly from the Faneca Objectors' efforts – are worth as much as \$122.6 million.⁴ They provide: \$36.8 million in additional benefits from extending eligible-season credit to NFL Europe, *see* Dkt. 7550-1 at 2; *see also* Dkt. 7070-1 at 22-26; Dkt. 7366 at 3; up to \$29.6 million in additional benefits from uncapping the BAP for examinations, Dkt. 7070-1 at 21-22; Dkt. 7366 at 3; \$44.6 million in estimated additional payments from extending the Death with CTE deadline, Dkt. 7366 at 3; *see also* Dkt. 7070-1 at 26-27; and \$11.6 million in additional payouts from erroneous claim determinations that would have gone without appeal absent the fee waiver for financial hardship, Dkt. 7550-1 at 2; *see also*

² As the Faneca Objectors have explained, the Revised Settlement had required one-half season of eligible-season credit to participate in the BAP. Dkt. 7070-1 at 24-25. And class members with no eligible seasons would have received a paltry 2.5% of the maximum monetary award for any qualifying diagnosis. *Id.* at 23. Because the Revised Settlement offered no eligible-season credit for NFL Europe, class members who played exclusively in NFL Europe would have had zero eligible seasons. They would not have been eligible to participate in the BAP and would have received essentially nothing for any qualifying diagnosis. *Id.* at 23-25.

³ As the Faneca Objectors have previously explained, many retired NFL players experience financial hardship. Some 78% are under financial stress within two years of retirement, 15.7% file for bankruptcy within twelve years of retirement, and one organization has provided need-based charitable grants to 956 retired players since 2007. *See* Dkt. 7070-1 at 28 n.38.

⁴ The Armstrong Objectors again attempt to take credit for some of those improvements. *See* Dkt. 8532. But the Armstrong Objectors did little more than piggyback on arguments the Faneca Objectors had already raised and evidence that the Faneca Objectors had already submitted. *See* Dkt. 7366 at 4-10. The Armstrong Objectors brought nothing new or useful to the table.

Dkt. 7070-1 at 27-28; Dkt. 7366 at 3.⁵ Indeed, those enhancements may be even more valuable than the Faneca Objectors have estimated. For example, while the Faneca Objectors valued the NFL Europe enhancement at \$36.8 million, Co-Lead Class Counsel valued it even higher – at \$41 million in additional payments to class members. *Compare* Dkts. 7366 at 3, 7550-1 at 2 (Faneca valuation), *with* Dkt. 7464-12 at 7 (Co-Lead Class Counsel valuation).

Co-Lead Class Counsel do not dispute that the class received those additional benefits *after* the fairness hearing. But they do deny that those improvements resulted from the Faneca Objectors’ efforts, arguing that the Faneca Objectors did nothing more than serve as liaison counsel for the fairness hearing. Dkt. 8447 ¶16a. Not so. The Faneca Objectors were first to identify the defects, problems, and inadequacies in what Co-Lead Class Counsel had negotiated. They were the only objectors to exhaustively brief the legal arguments *and* to build a voluminous record of evidence in support. Through their hundreds of pages of briefing – including their motion to intervene, their opposition to the motion for preliminary approval, their petition to appeal, their objection and supplemental objections, and their post-fairness hearing supplemental briefing, *see* Dkt. 7070-1 at 8-17 – the Faneca Objectors not only identified the deficiencies, they proposed concrete solutions. They submitted over *1,500 pages of evidence* along with that briefing – evidence that included expert declarations from *eleven* of the most prominent physicians and researchers in neuroscience, *see* Dkt. 7070-1 at 12-13, 15-16. *See also* Dkt. 7366 at 6-9 (summarizing Faneca Objectors’ efforts); Dkt. 7550 at 10-14 (similar). Those submissions “transform[ed] the settlement hearing into a truly adversarial proceeding,” *Dewey v. Volkswagen of Am.*, 909 F. Supp. 2d 373, 395 (D.N.J. 2012) (awarding objectors’ counsel fees), and

⁵ This valuation is supported by expert declarations from Joseph Floyd. *See* Dkts. 7366-1, 7550-1. Mr. Floyd is a certified public accountant, a certified fraud examiner, a lawyer, and holds an AICPA Accreditation in Business Valuation. An expert in valuation and forensic accounting, Mr. Floyd has served as an expert witness in federal and state courts across the country.

“sharpen[ed] the issues and debate on the fairness of the settlement,” *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 358 (N.D. Ga. 1993) (awarding objectors’ counsel fees). *See also* Dkt. 7070-1 at 33-36.⁶ Co-Lead Class Counsel repeatedly and strenuously argued *against* providing the class with the benefits sought by the Faneca Objectors.⁷

After this Court “review[ed] [those] submissions and arguments,” it ruled that changes to address the deficiencies raised by the Faneca Objectors “would enhance the fairness, reasonableness, and adequacy of the” settlement, and ordered Class Counsel and the NFL Parties to “address[] these issues, either through amendments to the Class Action Settlement, or through explanations as to why the parties are unwilling to agree to [such] amendments.” Dkt. 6479 at 1. The NFL ultimately agreed to accept the changes, and the Final Settlement was a dramatic improvement over the Revised Settlement. *See* Dkt. 7550 at 3-5. Thus, the “best overall deal” wasn’t the Revised Settlement that Co-Lead Class Counsel negotiated; it was the Final Settlement – more valuable by as much as \$122.6 million – that resulted directly from the Faneca Objectors’ efforts under this Court’s supervision as the “protector of the absentees’ interests.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). Because “the settlement was improved as a result of their efforts,” the Faneca Objectors “are entitled to an allowance as compensation for attorneys’ fees and expenses” that reflects the

⁶ Co-Lead Class Counsel and the NFL together submitted 1,325 pages of evidence. *See* Dkts. 6422, 6423, 6466, 6467. It is doubtful they would have mustered such evidence if not confronted with the arguments and evidence presented by the Faneca Objectors.

⁷ *See, e.g.*, Dkt. 6423-1 at 69-71 (arguing that capped BAP is not “insufficient”); *id.* at 75 (asserting that “the \$1,000 [appeal] fee ‘discourages groundless appeals but should not deter players who genuinely believe in the strength of their claims’”); *id.* at 12, 24-25 (noting that NFL Europe play “does not count towards, and is specifically excluded from, the calculation of an eligible season” but asserting that NFL Europe players were adequately represented nonetheless); Dkt. 6467 at 21 (defending exclusion of CTE as an exercise in “line-drawing”). All told, Co-Lead Class Counsel filed in this Court alone no fewer than six briefs opposing the Faneca Objectors’ efforts.

extent to which their efforts benefited the class. *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 743 (3d Cir. 2001).

II. Co-Lead Class Counsel's Allocation Rewards Efforts To Deny Benefits to the Class That the Court Deemed Just

This case was *all* about the settlement. Co-Lead Class Counsel state in their Declaration in Support of the Proposed Fee Allocation that “settlement negotiations” and “defen[se] [of] the settlement once it was consummated . . . were the two most important activities in this litigation.” Dkt. 8447-2 ¶6; *see also* Dkt. 8447 ¶14. The efforts in negotiating the Initial and Revised Settlements – which got the deal part-way home – benefitted the class. But the “defense of the settlement” actually sought to deny the class benefits it ultimately won.

At every turn, in court filings and in the media, Co-Lead Class Counsel vigorously opposed benefits ultimately achieved for the class. For example, after the Faneca Objectors identified unfairness in the Revised Settlement’s treatment of NFL Europe, *see, e.g.*, Dkt. 6082 at 28, Co-Lead Class Counsel persisted in defending that gross inequity in filings with this Court.⁸

In the media, they argued:

This was a complicated transaction. The case was specifically brought to provide help to players in the NFL. NFL Europe, um, is part of the deal But . . . in the context of a compromise where there’s give and take, you know, we had to focus on what our primary objective was, and that was getting help to players playing in the NFL who need it right now.

Audio file: Interview of Chris Seeger, CBS Sports Radio, The Mojo Show, at 9:09-9:45 (aired July 10, 2014); *see also* Dkt. 6201 at 35-36.

The same is true for every other improvement adopted as a result of the Faneca Objectors’ advocacy. Rather than pressuring the NFL to cure the problem and enhance the value

⁸ Co-Lead Class Counsel did so despite urging from their own legal expert, Prof. Klonoff, to “consider modifications to the settlement to address” the treatment of NFL Europe. Dkt. 6423-9 ¶93.

of the settlement, Co-Lead Class Counsel – arm in arm with the NFL – defended the Revised Settlement and opposed needed improvements:

III. The Faneca Objectors' Fee Request Is Reasonable

Based on the substantial improvement to the settlement resulting from their extensive efforts, the Faneca Objectors request an attorneys' fee of \$20 million and expenses of \$46,341.52. *See* Dkt. 7070-1 at 31; Dkt. 7366 at 16 n.19; Dkt. 7366-3. A "lawyer for an objector who raises pertinent questions about the terms or effects, intended or unintended, of a proposed settlement renders an important service." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 413 (E.D. Wis. 2002). And, when "the settlement was improved as a result of [objectors'] efforts," they "are entitled to an allowance as compensation for attorneys' fees and expenses." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 743.

The Faneca Objectors' requested fee is reasonable. It represents just 16.3% of the \$122.6 million in additional benefit that they secured for the class.¹¹ Other courts in this Circuit have awarded successful objectors similar percentages of the benefit they obtained. *See Dewey*, 909 F. Supp. 2d at 397 (13.4% of benefit awarded); *Lan v. Ludrof*, No. 1:06-cv-114, 2008 WL 763763, at *30 (W.D. Pa. Mar. 21, 2008) (25% of benefit awarded). The requested fee, moreover, represents only 2.3% of the total value of the settlement with the Faneca Objectors' improvements – \$882.6 million. It represents 17.6% of the \$113,906,652.28 that Co-Lead Class Counsel have allocated for payment of attorneys' fees and expenses. And it is a reasonable multiple of the Faneca Objectors' \$4.3-million lodestar, fitting comfortably within the range of lodestar multiples that courts in this circuit and others have awarded. *See, e.g., In re Rite Aid*

¹¹ Although the Faneca Objectors advocated for changes to the settlement that the NFL adopted only in part, or did not adopt at all, that does not diminish the \$122.6 million of improvements that the NFL did adopt as a result of the Faneca Objectors' advocacy. A party that "won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised." *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983); *see also* Dkt. 7550 at 12-14.

Corp. Sec. Litig., 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (awarding 6.96 lodestar multiplier); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (citing case awarding 7.7 lodestar multiplier); *see generally* Dkt. 7070-1 at 47-48.¹²

The *Girsh* factors further underscore the reasonableness of the Faneca Objectors' requested fee. Most prominently:

- *Size of the Fund:* The value that the Faneca Objectors brought to the class is staggering – over \$120 million, a sum that would be a substantial class settlement in its own right. *See* Dkt. 7070-1 at 40-41.
- *Number of Beneficiaries:* The Faneca Objectors brought the settlement's benefits to at least 2,300 previously excluded class members – and did so without reducing the recovery of any other class member. *Id.* at 41-42.
- *Value of the Benefit Relative to Others' Efforts:* The Faneca Objectors were first to raise the issues that ultimately brought additional benefit to the class and were the only objectors to build an extensive record of evidentiary and expert support. *Id.* at 42-43.
- *Complexity of the Litigation:* The evidence submitted by the Faneca Objectors makes clear just how complex this case was, involving medical issues at the vanguard of neuroscience. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 388-89 (E.D. Pa. 2015); Dkt. 7070-1 at 43-44.
- *Risk of Non-Payment:* The Faneca Objectors' counsel took this case on a 100% contingency-fee basis, with payment based entirely on their ability to improve the settlement. The risk that they would receive nothing at all was high. *See* Dkt. 7070-1 at 45.

Each of these factors weighs in favor of a substantial fee award for the Faneca Objectors. The other *Girsh* factors weigh just as heavily in the same direction. *See* Dkt. 7070-1 at 44-47.

Co-Lead Class Counsel's proposed allocation could be easily adjusted to accommodate the Faneca Objectors' fee request. Each of the proposed awards, for example, could be reduced

¹² By contrast, Co-Lead Class Counsel's proposed fee of \$150,000 represents a lodestar multiple of 0.035 for the Faneca Objectors.

by 17.6%, or the Court could reduce the allocated fee for firms who brought little benefit to the class. For example:

- The Dugan Law Firm submitted time in connection with work on the “Discovery and Preemption Committees.” Dkt. 8447 ¶15c. But there was no discovery, and litigation of the preemption issues preceded the filing of the class complaint for damages.
- Attorneys from Reinhart Wendorf & Blanchfield similarly seek payment for time in connection with discovery that never occurred. *Id.* ¶15s.
- A number of firms – Girardi Keese; Goldberg, Persky & White; and Hausfeld – are compensated for work in “early cases.” *Id.* ¶¶15e, 15f, 15h. But none claims to have performed *any* work negotiating or defending the settlement. *See* Dkts. 7151-16, 7151-19, 7151-20.
- Girard Gibbs seeks compensation for, among other things, “work[] . . . to obtain Final Approval of the Settlement.” Dkt. 8447 ¶15d. But those efforts were largely focused on opposing the Faneca Objectors, whose efforts ultimately benefitted the class.
- Mitnick Law seeks compensation for its “multi-faceted outreach efforts to the Retired NFL Player Community.” *Id.* ¶15o. But one can reasonably question the effectiveness of that outreach – and the benefit it brought to the class – given Mitnick’s gross misunderstanding of the settlement’s provisions. *See* Dkt. 7708.¹³

All told, the class lawyers together appear to have billed an inordinately large amount of time – as much as \$36-million-worth – on pre-settlement activities. *See* Dkt. 7550 at 16. That results in an unreasonably high lodestar. Discounting lodestar multipliers or decreasing a proposed allocation will work no injustice and leave plenty to compensate the attorneys who worked to negotiate and implement the settlement. *See* Dkt. 7070-1 at 31; Dkt. 7550 at 16-17. However the allocation is adjusted, it must fairly account for the substantial benefit conferred on the class by counsel for the Faneca Objectors.

¹³ Co-Lead Class Counsel proposes a 0.75 lodestar multiplier for Reinhart Wendorf and Mitnick Law, among others. But there is no reason to believe those firms are entitled to even that, given the complete absence of discovery in this case and Mitnick’s demonstrated ignorance of the settlement’s operation.

Many firms receiving fees under the proposed allocation, moreover, are double-dippers who will receive handsome compensation from contingency-fee agreements they entered into with individual clients. Co-Lead Class Counsel Seeger Weiss has – admirably – waived its right to compensation from individually retained class members. Dkt. 7151-1 at 4 n.8. But other class attorneys receiving common-benefit fees are fighting hard for the right to double-dip. The Podhurst Orseck firm – slated to receive nearly \$7 million under the proposed allocation, Dkt. 8447 ¶17 – represents some 535 individual players, Dkt. 7070-1 at 31 & n.49, and has *strenuously* opposed efforts to set aside individual fee agreements. *See* Dkt. 7071. The Locks Law Firm – allocated nearly \$4 million in common-benefit fees – joined in the Podhurst Orseck opposition, Dkt. 7085, as did another beneficiary of the common-benefit fee allocation, McCorvey Law, Dkt. 7073.¹⁴

There will not be any individual contingency fee for the Faneca Objectors’ counsel. *See* Dkt. 7070-1 at 45. They undertook their work expecting compensation only if they improved the settlement for the entire class. And that’s exactly what they did. The Revised Settlement that Co-Lead Class Counsel negotiated simply was not the best deal that the NFL agreed to. The deal that was, the Final Settlement, came about *only* because of the Faneca Objectors’ willingness to press for further concessions from the NFL, their advocacy regarding the Revised Settlement’s deficiencies, and the extensive record of scientific and expert evidence they developed to support their objections. For that \$122.6-million benefit, a \$20 million attorneys’ fee is reasonable. Co-Lead Class Counsel’s \$150,000 allocation most assuredly is not.

¹⁴ Many other class lawyers have submitted notices of attorneys’ liens, evidencing their intent to collect a contingency-fee award from their clients. *See, e.g.*, Dkts. 7034 (Pope McGlamry), 7137 (Zimmerman Reed), 7410 (Hausfeld), 7551 (Goldberg, Persky & White).

CONCLUSION

The Court should grant the Faneca Objectors' Petition for an Award of Attorneys' Fees and Expenses.

Dated: October 27, 2017

Respectfully Submitted,

/s/ Steven F. Molo

William T. Hangley
Michele D. Hangley
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, PA 19103
(215) 496-7001 (telephone)
(215) 568-0300 (facsimile)
whangley@hangley.com
mdh@hangley.com

Steven F. Molo
Thomas J. Wiegand
MOLOLAMKEN LLP
430 Park Ave.
New York, NY 10022
(212) 607-8160 (telephone)
(212) 607-8161 (facsimile)
smolo@mololamken.com
twiegand@mololamken.com

Linda S. Mullenix
2305 Barton Creek Blvd., Unit 2
Austin, TX 78735
(512) 263-9330 (telephone)
lmullenix@hotmail.com

Eric R. Nitz
MOLOLAMKEN LLP
600 New Hampshire Ave., NW
Washington, DC 20037
(202) 556-2000 (telephone)
(202) 556-2001 (facsimile)
enitz@mololamken.com

Counsel for the Faneca Objectors

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2017, I caused the foregoing Faneca Objectors' Response to the Declaration of Christopher A. Seeger Proposing an Allocation of Common Benefit Attorneys' Fees and Expenses to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven F. Molo

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden, *on behalf
of themselves and others similarly situated,*

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

Plaintiffs,

vs.

National Football League and NFL
Properties LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**COUNTER-DECLARATION OF JAMES T. CAPRETZ IN RESPONSE TO
PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEY'S FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND PAYMENT OF
CASE CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES**

I, James T. Capretz, submit this declaration pursuant to 28 U.S.C. § 1746, based upon my personal knowledge of the matters set forth herein:

1. I am an attorney licensed to practice law in all courts in the State of California. I was admitted to the California bar in 1969. I am admitted to several federal district courts and federal appellate courts throughout the United States. I am also admitted to practice in the state of Louisiana and before the U.S Supreme Court. I was retained to represent plaintiff class members Preston and Katherine Jones.

2. I am the principal of Capretz & Associates, a boutique consumer oriented law firm located in Newport Beach, California with a national practice that emphasizes complex civil and multidistrict litigation in its practice and is experienced in class action proceedings. In the 1992 matter of Bowling vs. Pfizer, Case No. C-1-91-256, in Federal District Court in Cincinnati, Ohio, I was appointed and still serve as Special Counsel for the class. The case resulted in a seminal worldwide class action settlement with the Pfizer pharmaceutical company for a value over \$300 million dollars to pay claims arising from defective prosthetic heart valves. In 2000, I was appointed co-lead counsel in the Minnesota based MDL No. 1396 In Re St. Jude Medical Inc., Silzone Heart Valve Product Liability Litigation. This was a class action on behalf of medical patients wearing a prosthetic heart valve known as a St. Jude Silzone valve. The class was certified by federal judge John Tunheim. Viable individual claims have been settled through this date over a period of years of litigation. Also, I served as Co-Lead counsel in the San Diego class action known as Shames vs. The City of San Diego, Case No. GIC831539. This case was on behalf of the residents of San Diego who were overcharged for certain sewer taxes; the city settled for \$40 million dollars. I also have served as a State Liaison Counsel in the MDL proceedings known as In Re Propulsid Products Liability Litigation, MDL No. 1355, before Judge Eldon E. Fallon in New Orleans, Louisiana and on the Plaintiffs' Steering Committee in the matter of In Re Medtronic Inc., Sprint Fidelis Leads Product Liability Litigation, MDL No. 1905, in the United District Court, District of Minnesota. I also was selected to assist the Plaintiffs Steering Committee In re Avandia Marketing, Sales, Billing Practices and Products Liability Litigation MDL No. 1871. I was recently co-lead counsel in the cell phone tax class action matter of Carla Villa and Vanessa Garza vs. City of Chula Vista which case was settled for a value of close to ten million dollars and the settlement was found to be fair, adequate and

reasonable by the court on December 12, 2013. Other class actions or complex litigation cases in which I have been involved include, but are not necessary limited to: In Re Microsoft Corp. Windows Operating Systems Antitrust Litigation, MDL No. 1332 (Maryland); In Re Warfarin Sodium Antitrust Litigation, MDL No. 1232 (Delaware); Allec v. Cross Country Bank, OCSC Class Action No. 802894 (California); In Re Rezulin Product Liability Litigation, MDL No. 1348 (New York); In Re diet Drugs, MDL No. 1203 (Pennsylvania); In Re Silicone Gel Breast Implants Products Liability Litigation MDL No. 926 (Alabama); and, In Re Synthroid Marketing Litigation, MDL No. 1182 (Illinois).

3. My firm represents class members Preston Jones and Katherine Jones (the "Jones Objectors"), who successfully objected to the initial June 25, 2014 proposed settlement based on its failure to award any settlement benefit credit for seasons played in the NFL Europe leagues. Preston Jones is an NFL retired player who played most of his NFL career in Europe. Katherine Jones is his spouse. The Jones Objectors subsequently filed a fee petition pursuant to the briefing schedule earlier set by this Court (ECF Nos. 7364, 7555).

4. This Court more recently on October 11, 2017 ordered that "any counter-declaration in response to the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives (ECF No. 8447)" (the "Seeger Declaration") must be submitted by October 27, 2017. ECF No. 8448. It is not immediately clear that the October 10, 2017 Seeger Declaration has anything to do with the pending common benefit fee requests of objectors, as the Court had asked Mr. Seeger to propose a fee allocation among Class Counsel only (ECF No. 8367), and indeed his declaration ostensibly addresses only allocations among non-objecting Class Counsel pursuant to the fee petition filed by Co-Lead

Class Counsel (Seeger Decl., p. 3, ¶ 5), which inevitably did not include any objectors. But at the same time, Mr. Seeger incongruously titled his declaration to refer more broadly to fees for "common benefit attorneys" rather than Class Counsel, and it apparently seeks to entirely exhaust the Attorneys' Fees Qualified Settlement Fund created by the Settlement for benefits rendered to the Class by counsel—despite earlier briefing in which Mr. Seeger suggested the Court set aside a portion of the Fund for appropriate allocation among Objectors (ECF No. 7151-1 at p. 70; ECF No. 7151-2 at p. 30, ¶ 100)—and his declaration references objectors in passing (Seeger Decl., p. 13, ¶ 16).

5. The matter of fee awards for successful objections to the original proposed settlement has been briefed by my firm and others. With respect to the treatment of NFL Europe-league players and their families, the preliminarily approved June 25, 2014 proposed settlement offered by Class Counsel and the NFL Parties (ECF Nos. 6073, 6084) did not credit any NFL European league season play toward qualification for settlement benefits. Under the original proposed settlement, retired players who played only in Europe were denied 97.5% of benefits of the settlement, no matter how many years they played. ECF No. 6087, June 25, 2014 proposed settlement, p. 9, §2.1(kk). The Jones Objectors and several others filed briefs or letters opposing the original proposed settlement specifically due to its extraordinarily poor treatment of Europe league players. Co-Lead Class Counsel filed substantial briefs *against* improving the settlement for NFL Europe-league players and their families.

6. The Court declined to approve the June 25, 2014 proposed settlement on enumerated grounds in its Order of February 2, 2015 (ECF No. 6479). The first bullet point in the Court's Order called upon Class Counsel and counsel for the NFL to fix the Europe-league omission and instructed the parties that "[t]he settlement should provide for some Eligible

Seasons credit for play in the World League of American Football, the NFL Europe League, and the NFL Europa League." This gave rise eleven days later (ECF No. 6481-1) to what would become the final improved Settlement. See ECF No. 6509, 4/22/15 Order at p. 4 & n. 1; p. 12 ("[O]n February 13, 2015, the Parties amended the Settlement, making it more favorable to the Class.").

7. In its approval of the final Settlement, this Court expressly noted that the final Settlement includes an amendment that enhances benefits for retired NFL players who played in NFL-Europe leagues, in response to "concerns raised by several Objectors." ECF No. 6509, 4/22/15 Order at p. 104, n.76 (listing Objectors Morey, Slack, Duff, Jones, and Zeno). The final Settlement confers a half-season benefits credit for each season a retired player played in Europe. *Id.* at pp. 103-04. Co-Lead Class Counsel's own proffered expert has calculated the value to the Class of this amendment at \$41 million (ECF No. 7464-12 at p. 7). It makes little sense for Mr. Seeger to claim fees (much less with multipliers) for Class Counsels' efforts at *opposing* enhanced benefits for NFL Europe-league retired players and their families, and then further to claim the value of those ultimately achieved benefits as a prominent component of the final Settlement for which he seeks credit.

8. Again, it may be that the Seeger Declaration is simply not relevant to the pending issue of attorney fees for the Europe-league settlement improvements, as he declares himself to be addressing only an allocation of funds among "the firms who submitted declarations in support of [Class Counsel's] Petition for an Award of Attorney's Fees" (Seeger Decl., p. 3, ¶ 5), and does not reference or acknowledge the improved Europe-league benefits in the final Settlement. But as the Seeger Declaration now apparently seeks to allocate precisely all of the reportedly available \$114,206,652.28 in the Attorneys' Fees Qualified Settlement Fund and

Escrow Account (see Exhibit to Seeger Decl.), without addressing the NFL Europe-league improvements originated by certain objectors and previously recognized by this Court, I submit this invited counter-declaration as counsel to the Jones Objectors in an abundance of caution.

I swear under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October 2017.

/s/ James T. Capretz

James T. Capretz

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**DECLARATION OF STEVEN C. MARKS
IN RESPONSE TO CO-LEAD COUNSEL'S PROPOSED ALLOCATION OF COMMON
BENEFIT ATTORNEYS' FEES AND EXPENSES**

I, STEVEN C. MARKS, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the law firm of Podhurst Orseck, P.A. and was appointed as Settlement Class Counsel in this litigation. I also served on the Plaintiffs' Executive Committee, on the Plaintiffs' Steering Committee, and as Co-Chair of Communications Committee.

2. I adopt my previously filed Declaration (DE 7151-8), which details Podhurst Orseck's substantial work and contributions at every stage of this action.

3. As almost the entirety of the Plaintiffs' Steering Committee and Plaintiffs' Executive Committee have done, Podhurst Orseck objects not only to the specific fee we were allocated under Co-Lead Counsel's proposal, but also to the process that Co-Lead Counsel followed.

4. The flaws in Co-Lead Counsel's process and proposal are thoroughly addressed in several objections already submitted. Podhurst Orseck does not wish to burden the Court with further submissions, but we also did not want our silence to be construed as an endorsement of Co-Lead Counsel's proposed allocation, and thus felt compelled to register our objection as well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2017, at Miami, Florida.

/s/ Steven C. Marks
Steven C. Marks, Esq.
Fla. Bar No. 516414
PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2700
Miami, Florida 33131
(305) 358-2800 / Fax (305) 358-2382
Email: smarks@podhurst.com

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2017, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven C. Marks
Steven C. Marks, Esq.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this __7TH__ day of November, 2017, it is **ORDERED** that any omnibus reply by Co-Lead Class Counsel to the counter-declarations that were filed in response to Co-Lead Class Counsel's Proposed Allocation of Common Benefit Attorneys' Fees must be submitted **on or before November 17, 2017**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:



LOCKS LAW FIRM

The Curtis Center
601 Walnut Street, Suite 720 East
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106
T 215.893.0100
T 866.LOCKSLAW
F 215.893.3444
lockslaw.com

GENE LOCKS
glocks@lockslaw.com
215-893-3434

November 10, 2017

VIA ECF FILING

The Honorable Anita B. Brody
United States District Court for the
Eastern District of Pennsylvania
601 Market St.
Philadelphia, PA 19106

RE: November 13, 2017 Conference

Dear Judge Brody:

As you know, I am one of the class counsel in the NFL Settlement Agreement. As you may also know by my Declaration recently filed with the Court, my firm has registered the largest number of claimants in the Settlement of this case. We have filed the fourth largest number of claims for monetary awards, and we have processed to conclusion the largest number of claims of any firm to date.

In light of the above, I was disappointed to be disinvited from the November 13 hearing in chambers regarding settlement implementation. We would like to provide to the Court the first-hand experience of our firm, because we believe it would be helpful to the Court and the parties as they address implementation issues. We respectfully request that the Court reconsider its recent Order and allow me to attend Monday's meeting.

Regardless, we respectfully request that Monday's conference be recorded and a transcript generated. I trust you understand my sincere motivation and interest to address my concerns as class counsel and as individual counsel to the players my firm represents.

Respectfully submitted,

By:


GENE LOCKS

GL:pt

Cc: All counsel of record (via ECF filing)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on November 10, 2017.



David D. Langfitt, Esquire

November 10, 2017



MITNICK LAW OFFICE

A LITIGATION AND CLAIM RESOLUTION FIRM

1-877-MITNICK

www.MitnickLawOffice.com

New Jersey Office

35 Kings Highway East
Haddonfield, NJ 08033
P. 856.427.9000
F. 856.429.2438

Reply to New Jersey Office

Philadelphia Office

123 South Broad Street Suite 2500
Philadelphia, PA 19109
P. 215.769.9000
F. 856.429.2438

November 10, 2017

The Honorable Anita B. Brody
US DISTRICT COURT, EASTERN DISTRICT OF PA
James A. Byrne U.S. Courthouse
601 Market Street
Room 7613
Philadelphia, PA 19106-1717

RE: NFL Concussion Litigation
No. 2:12-md-02323-AB
MDL No. 2323

Dear Judge Brody:

Please allow this letter to serve as my formal request to withdraw my objection to Christopher Seeger, Esquire's fee petition allocation recommendation that I previously filed with the Court.

After much thought and deliberation, I have realized how much time and energy Mr. Seeger and his firm have put into the NFL concussion litigation, it's successful resolution and their recommendation for the allocation of common benefit fees. If not for Mr. Seeger's efforts, there is no doubt that this case would have never materialized as quickly as it did. I would hope that this letter to the Court would give food for thought to the other attorneys who have objected to Mr. Seeger's fee allocation recommendation, given the substantial work primarily done by Mr. Seeger and his firm and the benefit it has had on the class of retired players and all attorneys involved.

Respectfully,

/s/Craig R. Mitnick

CRAIG R. MITNICK

CRM/sjg

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,


Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

ABB
~~PROPOSED~~ ORDER

AND NOW, this 15 day of November, 2017, upon consideration of Co-Lead Class Counsel's letter requesting an extension to facilitate the filing of an omnibus reply in further support of Co-Lead Class Counsel's Motion to (1) Direct Claims Administrator to Withhold Any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lenders and Claims Services Providers, and (2) Direct Disclosure to the Claims Administrator of Existence of Class Member Agreements with All Third Parties,

IT IS ORDERED that Co-Lead Class Counsel's omnibus reply shall be filed on or before November 30, 2017.



Anita B. Brody
United States District Judge

Copies via ECF on _____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**OMNIBUS REPLY DECLARATION OF CHRISTOPHER A. SEEGER AS TO
RESPONSES, OBJECTIONS AND COUNTER-DECLARATIONS TO
PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND
PAYMENT OF CASE CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES**

CHRISTOPHER A. SEEGER declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, information and belief, the following:

1. I am fully familiar with the matters set forth herein, including the procedural history of this litigation and the class-wide settlement (“Settlement”) that this Court approved in April 2015 and which is currently being implemented. I submit this Omnibus Reply Declaration pursuant to the Court’s September 12, 2017 Order directing me to submit a detailed proposal for

the allocation of lawyers' fees among common benefit counsel, including the precise amounts to be awarded [ECF No. 8367], and pursuant to the Court's November 7, 2017 Order [ECF No. 8900], allowing an omnibus reply. This Omnibus Reply Declaration incorporates my opening Declaration on the allocation issue, dated October 10, 2017 [ECF No. 8447] ("Seeger Opening Allocation Decl."), as well as my previous declarations submitted in connection with Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives ("Fee Petition"), dated February 13, 2017 [ECF No. 7151]. *See* ECF No. 7151-2 (Declaration in support of Fee Petition, dated February 13, 2017), and ECF No. 7464-1 (Supplemental Declaration in support of Fee Petition, dated April 10, 2017).

2. Herein, I address the seventeen submissions filed by various law firms¹ taking issue with (a) my ability to fairly propose the allocation; (b) the process I used to determine the allocation;

¹ The law firms/lawyers representing Class Members who were not objectors, and which firms submitted responses in opposition to my proposed allocation, mostly members of the PEC or PSC, are as follows: Goldberg, Persky & White, P.C. (Jason Lukasevic) [ECF No. 8556]; Rose, Klein & Marias LLP (David A. Rosen) [ECF No. 8576]; Hagen, Roskopf & Earle, LLC (Bruce A. Hagen) [ECF No. 8687]; Anapol Weiss (Sol Weiss) [ECF No. 8701]; Locks Law Firm (Gene Locks) [ECF No. 8709]; Girardi | Keese (Thomas V. Girardi) [ECF No. 8719]; Kreindler & Kreindler LLP (Anthony Tarricone) [ECF No. 8720]; Pope, McGlamry, P.C. (Michael L. McGlamry) [ECF No. 8721]; Zimmerman Reed LLP (Charles S. Zimmerman) [ECF No. 8722]; McCorvey Law, LLC (Derriel C. McCorvey) [ECF No. 8724]; and Podhurst Orseck, P.A. (Steven C. Marks) [ECF No. 8728]. Craig R. Mitnick of Mitnick Law Office, LLC, initially filed a response to my proposed allocation [ECF No. 8653], but subsequently withdrew that response [ECF No. 8917]; thus, his submission is not addressed herein.

The law firms that represented objectors and which take issue with my proposed allocation are: The Coffman Law Firm; Weller, Green, Touns & Terrell, LLP; The Webster Law Firm; and The Warner Law Firm (collectively, the Armstrong Objectors) [ECF No. 8532]; Lubel Voyles LLP (the Alexander Objectors) [ECF No. 8725]; MoloLamken LLP and Hangley Aronchick Segal Pudlin & Schiller, and Linda S. Mullenix (the Faneca Objectors) [ECF No. 8726]; and Capretz & Associates (the Jones Objectors) [ECF No. 8727].

and (c) the specific amounts that I propose be awarded to the respective firms, as well as lodging various and sundry other complaints.²

Overview

3. In arriving at the proposed allocation that the Court asked me to submit, I relied both upon my own intimate knowledge of each law firm's relative contributions to achieving, maintaining, and implementing this historic Settlement and upon the common benefit time and expense data and narratives that my firm collected from the other law firms in connection with filing the Fee Petition.

The motion portion of the response to my proposed allocation by Neurocognitive Football Lawyers, PLLC and The Yerrid Law Firm [ECF No. 8723], which was joined in by X1Law, P.A. and Loren & Kean Law [ECF No. 8729], was addressed separately in my firm's Memorandum in Opposition to Neurocognitive Football Lawyers, PLLC's and The Yerrid Law Firm's "Motion to Prioritize," filed on November 9, 2017 [ECF No. 8914] ("Opposition to Motion to Prioritize").

² Although many opposing the allocation that I propose also argue against the requested 5% set-aside for future common benefit work, because the Court will not address that request prior to receiving a report from Prof. William B. Rubenstein, and all parties will have the opportunity to respond to Professor Rubenstein's report, which is due by December 1, 2017, I do not address that issue herein. *See* ECF No. 8376. I merely noted in my Opening Allocation Declaration, dated October 10, 2017 [ECF No. 8447], at ¶ 21, that common benefit time expended in implementation of the Settlement was not included in the time related to the present proposed fee allocation.

Some firms opposing my proposed allocation used their responses as platforms to make arguments that the aggregate fee award sought in connection with the Fee Petition filed in February is premature. Some claim that it should be delayed until more Class Members receive compensation. *See, e.g.,* ECF No. 8723. Others maintain that a decision by the Court relating to their individual retainers must precede the decision on the aggregate fee and expense award and allocation. *See, e.g.,* ECF No. 8721 (McGlamry), at ¶¶ 11-16. Similarly, I do not address that issue herein.

As noted in our Opposition to the Motion to Prioritize, both the 5% set-aside and the alleged prematurity issues were improperly raised in connection with the proposed *allocation* that the Court asked me to provide. *See* ECF No. 8914.

6. These detractors claim that I unfairly reserved the majority of work for my own firm and certain select other firms and persons.

³ In *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-cv-01827-si, 2012 WL 12918720, at *2 (N.D. Cal. Dec. 18, 2012), the Special Master proposing the allocation, who notably had long been involved in that litigation and was intimately aware of the involved law firms' respective contributions, commented upon the various firms' self-evaluations:

This observation is equally apt here.

3384], followed by the parties' agreement to a Term Sheet in August of 2013 [ECF No. 5235], that this litigation was now on a far different trajectory and that discovery was most likely not going to occur. Thus, unlike cases involving large productions of documents, with the corresponding witnesses to be deposed, and related discovery motion practice, there were not discrete segments of this litigation or even individual tasks that could be easily or practically parceled out to these firms who claim that they asked for, but were not assigned work. In discovery-intensive cases, lead counsel necessarily must rely on many other firms to get the discovery completed in a timely manner. That was not the case here. *See* Supplemental Declaration of Brian T. Fitzpatrick, dated November 17, 2017 ("Fitzpatrick Supp. Decl."), at ¶ 2.

8. As the first Court-appointed Co-Lead Counsel, and de facto head of the Plaintiffs' leadership,⁴ it was my responsibility to draw from the pool of available counsel in the PEC and PSC, or to go outside of their ranks, in order to ensure that the firm(s) and/or individual(s) best suited for each assignment were selected.

9. Relying upon my experience from other cases, my knowledge of the specific facts related to this case, and knowing most of the lawyers in the PEC and PSC from other cases, I exercised my judgment throughout the litigation in recruiting the best talent and assigning work, including, *inter alia*, choosing (a) Arnold Levin and Dianne Nast to serve as Subclass Counsel during settlement negotiations; (b) attorneys from my own firm and Levin Sedran & Berman to engage in the further line-by-line negotiations with the NFL's attorneys in order to draft the detailed 100-page Settlement Agreement following the agreement to the general Term Sheet and

⁴ I was appointed to serve as Plaintiffs' Co-Lead Counsel by the Court on April 26, 2012, as per CMO No. 2, in which the Court also directed the PEC to "report back to the Court its choice for local Co-Lead Counsel from Philadelphia-based lawyers." ECF No. 64. Sol Weiss was selected as a result of that process, and the Court made his appointment on May 11, 2012, in CMO 3 [ECF No. 72].

then to revise the Settlement Agreement, under the auspices of Special Master Perry Golkin, in connection with uncapping the deal; (c) attorneys from my own firm and certain others to assist in drafting the preliminary and final approval papers; (d) Prof. Samuel Issacharoff to provide guidance initially during the settlement negotiations, to strategize on and direct the briefing on preliminary and final approval and the multiple appeals, to present oral argument to the Third Circuit on those appeals, and to strategize and direct the briefing on the certiorari petitions to the United States Supreme Court; and (e) attorneys from my own firm and certain others to assist in the Settlement's implementation.

10. The assessments of lawyers' relative contributions set forth herein and in my Opening Allocation Declaration are from my perspective, as Co-Lead Class Counsel, which is what the Court sought. I have now had the benefit of reviewing the most recent submissions voicing disagreement with my assessments. While I can appreciate these lawyers' perspectives, they have not moved me to change my recommendation to the Court as to the proposed allocation previously submitted. The final decision on allocation will, of course, be made by the Court.

Seeger Weiss Collected Common Benefit Fee and Expense Information from the Law Firms and Audited Same

11. In anticipation of filing a petition for fees, if and when all appellate challenges to the Settlement were exhausted, on July 25, 2016, my firm reached out to over 130 law firms, including those on the PEC and PSC, those representing individual clients, some of whom I knew had done some common benefit work, and others who I believed might claim that they had, and those who had represented objectors. We asked them to submit their common benefit time and expenses for the time period from January 2012, when the Multidistrict Litigation ("MDL") was created, through July 15, 2016 time. *See also* Seeger Opening Allocation Decl. [ECF No. 8447]

at ¶¶ 13-17. We requested that all submissions be made by August 31, 2016 and utilize a template that my firm had prepared to make our review more efficient.

12. Once submissions were received and audited, some well past the requested deadline and some ignoring the template that was provided, my firm engaged in active dialogue with the firms regarding challenges that certain time or expenses were not actually attributable to the “common benefit.” We used Case Management Order No. 5 (“CMO-5”) to guide our review and dialogue. *See* ECF No. 3710. Many law firms included time for activities that were expressly disallowed by CMO-5, such as time spent communicating with or working on behalf of their individual clients, time billed for activities prior to the formation of this MDL, obviously duplicative or excessive billing, and “read/review time” of individuals having no evident responsibility in the litigation. Similarly, we also flagged entries that lacked sufficient detail to enable us to judge whether a task was for the common benefit, and provided firms with the option to provide missing details. In all instances, we provided each firm with an opportunity to justify why any challenged time should be deemed “common benefit” time.

13. Ultimately, in connection with filing the Fee Petition, we asked each non-objector law firm to draft a declaration describing, in their own words,⁵ what they viewed as their firm’s

⁵ Mr. Tarricone now complains that my firm asked him to remove certain language from his declaration, namely, that the communications strategy in which he was involved “was a carefully orchestrated effort that influenced the NFL to engage in settlement negotiations that culminated in the class settlement,” and that he complied and removed the language. *See* ECF No. 8720 at ¶ 15 n.1. He asserts that I had him remove the language for the purpose of watering down and minimizing his contribution. That is most decidedly *not* why he was asked to remove that language. Mr. Tarricone was asked to remove that language because it was an inaccurate statement. The messaging and public relations during the time prior to the Settlement was one factor of many, and by no means a leading factor in bringing about the Settlement. Rather, litigation risks – such as how the NFL would fare on the preemption issue, the real threat of a trial against experienced trial lawyers, and the uncertainty of jury awards – were far more likely the weightier considerations that the NFL had to take into account. Furthermore, as I noted in my Opening Allocation Declaration, in describing Mr. Tarricone’s contribution, the main thrust of the media campaign

contribution to the Class as a whole, and even provided templates for same to some firms that requested assistance with this simple task. While some firms described their purported common benefit work in great detail, most spent little time drafting the declarations and were very brief in their descriptions. *Compare, e.g.*, Declaration of Levin Sedran & Berman [ECF No. 7151-6], at ¶ 2, or Declaration of Samuel Issacharoff [ECF No. 7151-18], at ¶ 2 *with* Declaration of Thomas V. Girardi [ECF No. 7151-16], at ¶ 2, or Declaration of Jason E. Lukasevic [ECF No. 7151-20], at ¶ 2. In some instances, when detail was lacking, but I knew that the firm had made a notable contribution to the common benefit in an area not mentioned or particularly highlighted in that firm's initially submitted declaration, my firm suggested that additional detail be added. Like the preparation of the declaration itself, however, we left the addition of further detail to the individual firms.

14. These declarations were signed by the principals of the law firms, were submitted with the Fee Petition, and purported to set forth all of their common benefit hours and expenses and to describe what they did to merit reimbursement of same from the Attorneys' Fees Qualified Settlement Fund. Ironically, a number of counsel who sent us rather insubstantial declarations now complain that more time of their time was not included, or that I gave their allegedly key contributions short shrift.

and Communications Committee was to ensure accurate information about the Settlement was being disseminated to Class Members, and to counter misinformation. *See* ECF No. 8447, at ¶ 15.k. *See also* ECF No. 7151-1 (Fee Petition), at 11 (ECF p. 22) ("communications strategy" was designed to "ensure that the broader player community (and the public at large) was fully apprised of the factual, medical, and legal issues encompassed by Plaintiffs' claims and the litigation, and to counteract any misinformation, from whatever source."); ECF No. 7151-2, at ¶ 33 ("Plaintiffs' Counsel were concerned about the dissemination of incomplete or misleading information to Plaintiffs, the broader player community, and the public at large.").

The Court Requested That I Submit a Proposed Allocation

15. Certain firms disagree with the Court’s decision to ask me to submit a proposed allocation, likening me to a “fox” divvying up the chickens, and claiming that I cannot be objective, or worse. *See, e.g.*, ECF No. 8709 (Locks), at 7 (citing *In re Diet Drugs*, 401 F.3d 143, 173 (3d Cir. 2005) (Ambro, J., concurring) (suggesting that it would be inappropriate to give “substantial deference” to MDL leadership in determining how to allocate common benefit fees, because those lawyers have conflicts of interest)).⁶

16. Notwithstanding the ad hominem attacks on me, the Court’s request that I propose an allocation is not unusual or improper. Rather, it was, and, even after the observations by Judge Ambro in his 2005 concurrence in *Diet Drugs*, it remains the norm that district courts in this Circuit, and elsewhere, ask lead counsel in class action cases for input on allocation, or delegate to them entirely the task of allocation. “Generally, a district court may rely on lead counsel to distribute attorneys’ fees among those involved.” *Milliron v. T-Mobile, USA, Inc.*, 423 F.d. App’x 131, 134 (3d Cir. 2011); *Wallace v. Powell*, 301 F.R.D. 144, 168 (M.D. Pa. 2014).⁷ Allocation of fees in

⁶ In *Diet Drugs*, the Third Circuit dismissed appeals from an interim allocation of fees for want of appellate jurisdiction. 401 F.3d at 156-61. Judge Ambro agreed, in a concurring opinion, that the appeals should be dismissed and merely expounded on the pros and cons of courts’ outright delegation of fee allocations (what he termed “the delegation approach”), as opposed to their obtaining the input of counsel but making the final allocation themselves (“the reexamination approach”) and the degree of deference that should be afforded such recommendations. *Id.* at 168-74 (Ambro, J., concurring). That discussion is not only non-binding *dicta* (if there can be said to be such a thing in a concurring opinion), but also is immaterial here because the Court did not delegate the allocation of fees to me outright. Rather, the Court requested my *recommendations*. Moreover, the Court has received responses to my recommendations from a number of affected counsel. *See supra* n.1. Ultimately, the Court will make the allocation.

⁷ *See also Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 90 (2d Cir. 2010) (citing the “fox divvying up the chickens” language from Judge Ambro’s concurrence in *In re Diet Drugs*, 401 F.3d at 173, but nevertheless holding that “[s]ince lead counsel is typically well-positioned to weigh the relative merit of other counsel’s contributions, it is neither unusual nor inappropriate for courts to consider lead counsel’s proposed allocation of attorneys['] fees”); *In re*

this manner is rational because lead counsel “are most familiar with the work done by each firm and each firm’s overall contribution to the litigation,” and this process “conserves the time and resources of the courts.” *In re Processed Egg Prods. Antitrust Litig.*, No. 08-2002, 2012 WL 5467530, at *7 (E.D. Pa. Nov. 9, 2012); accord *In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 351-52 (E.D. Pa. 2004) (delegating allocation outright to lead counsel because counsel who “has managed the case from its inception,” is better able to assess the weight and merit of each firm’s contribution); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008) (counsel who have directed case from inception “are best able to assess the weight and merit of each counsel’s contribution”).

17. Contrary to what some maintain, *see* ECF No. 8723 (Lubel), at 7 n.10, courts have not adopted any practice or rule, formal or informal, whereby large awards of attorneys’ fees are to be treated differently in this respect. Even in such cases, courts often seek or defer altogether to the judgment of lead class counsel. *E.g.*, *In re Vitamins Antitrust Litig.*, 398 F. Supp. 2d 209, 224 (D.D.C. 2005) (lead counsel would have initial responsibility for allocating over \$123 million in fees, subject to court’s review); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (awarding \$121 million in attorneys’ fees, “to be allocated by Plaintiffs’ Lead Counsel among the PSC firms and additional counsel performing common-benefit work”); *In re AOL Time Warner*,

Initial Pub. Offering Secs. Litig., No. 21 MC 92(SAS), 2011 WL 2732563, at *7 (S.D.N.Y. July 8, 2011) (“Based on lead counsel’s familiarity with the underlying litigation, fee allocation proposals are often afforded substantial deference.”); *In re Copley Pharm., Inc., Albuterol Prods. Liab. Litig.*, 50 F. Supp. 2d 1141, 1149 (D. Wyo. 1999) (where attorneys could not reach “unanimous stipulation” regarding fee allocation of \$150 million attorneys’ fees fund, court allocated fees but “necessarily gave substantial deference to Lead Counsel’s proposed allocation. In a case of this magnitude, the assistance of Lead Counsel on matters such as this is especially invaluable.”), *aff’d and remanded*, 232 F.3d 900 (10th Cir. 2000).

Inc. Sec., No. 02 Civ. 5575 (SWK), 2006 WL 3057232, at *2 (S.D.N.Y. Oct. 25, 2006) (\$147.5 million attorneys’ fees award to be allocated by lead counsel); *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 2750 (DLC), 2005 WL 2293178, at *1 (S.D.N.Y. Sept. 21, 2005) (awarding \$187,720,000 in attorneys’ fees, to be allocated by lead counsel); *In re Pfizer Sec. Litig.*, No. 04-cv-9866 (LTS)(HBP), ECF No. 727, at ¶ 4 (S.D.N.Y. Dec. 21, 2016) (awarding attorneys’ fees of 28% of \$486 million settlement and directing lead counsel to allocate attorneys’ fees and expenses amongst plaintiffs’ counsel). Again, ultimately, the Court alone will make the final allocation of common benefit fees.

There Is No Need for the Court to Appoint a Special Master or to Delegate the Allocation of Common Benefit Fees to Magistrate Judge Strawbridge

18. Some firms complaining about the Court’s intention to consult my proposal in making the final determination on allocation, suggest that a Special Master should be appointed or that the Magistrate Judge should be utilized for this purpose. *See* ECF Nos. 8697, at ¶ 29 (“neutral” special master), 8701, at 1, 15 (Magistrate Judge David R. Strawbridge or a Special Master), 8720, at ¶ 2, 8720-2, at 2, 10-11, 13 (Special Master), 8721, at ¶ 2 (Special Master), and ECF No. 8723 (Special Master).

19. These firms ignore the fact that the Court clearly already considered and rejected the idea of appointing someone else to weigh in on or to make either the aggregate award for common benefit fees, or the subsequent allocation of same.

20. On April 4, 2017, the Court issued an Order referring the issue of individual attorney liens to Magistrate Judge Strawbridge and specifically reserving for itself the “Petition for Award of Attorneys’ Fees (ECF No. 7151), any objections to that Petition, and *all similar filings related to fees associated with the Settlement Class as a whole.*” ECF No. 7446 (emphasis added).

21. On September 14, 2017, the Court issued an Order appointing Professor Rubenstein as an expert to assist the Court in determining whether the Court has the authority, and if so, whether it should cap the percentage on individual retainer agreements, and whether it is appropriate to set aside a percentage of each Class Member’s monetary award for the purpose of compensating Class Counsel for future common benefit work, and if so, whether 5% is the appropriate percentage. ECF No. 8376. The Court specifically reserved for itself the “reasonableness of Class Counsel’s request for \$112.5 million,” noting that the Court was not asking Professor Rubenstein to address that issue in his report. *Id.*

22. Only two days earlier, on September 12, 2017, the Court had directed me to “submit a detailed submission as a proposal for the allocation of lawyers’ fees among class counsel including the precise amounts to be awarded along with a justification of those amounts based on an analysis of the work performed.” ECF No. 8367.

23. Presumably, had the Court desired to appoint a Special Master or to assign the allocation to Magistrate Judge Strawbridge, the Court would have done so already in connection with one of these orders.

24. In many of the reported cases in which a special master was used, the special master had been involved in the litigation for a significant period of time prior to the fee allocation and thus, had an opportunity to observe the lawyers’ work. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944-SC, 2016 WL 6909680, at *2 (N.D. Cal. Oct. 24, 2016) (“The Special Master has also had an opportunity to observe first-hand the work of some of IPP counsel during the motion for class certification and the *Daubert* motion and during the earlier motions for approval of the settlement and for attorneys[’] fees.”); *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M 07-1827 SI, 2013 WL 1365900, at *3 n.3 (N.D. Cal. Apr. 3, 2013) (Special

Master had long been involved in litigation and thus “had an opportunity personally to deal with, observe and evaluate the work of many of the [Indirect Purchaser Plaintiff] counsel who [were] seek[ing] attorneys’ fees and costs”).

25. Such was not the case here. Only the Court, itself had the opportunity to personally deal with and to evaluate the work of counsel. The Court was intimately involved at all stages of the proceedings and, no doubt, has substantial first-hand familiarity with the roles and involvement of counsel in yielding the benefits to the Class. As such, there is no need to involve a special master or Magistrate Judge Strawbridge at this stage to advise the Court as to how to allocate the Attorneys’ Fees Qualified Settlement Fund. The Court is fully informed and capable of being neutral.

The Method I Used for Arriving at the Proposed Allocation – Lodestar with Multiplier – Was Appropriate

26. Many detractors take issue with my process for arriving at the proposed allocation. I used each firm’s lodestar and applied a multiplier.

27. Some firms contend that the multiplier that I propose for their firm is simply not large enough – Anapol Weiss (2.5), Kreindler & Kreindler (1.25), Locks Law Firm (1.25),⁸ and Podhurst Orseck (2.25) fall into this category. Others take issue that I recommend only a multiplier of “1” (meaning no enhancement of their lodestar) – Girardi | Keese, Goldberg Persky & White, Hagen Rosskopf & Earle, McCorvey Law, Pope, McGlamry, Rose, Klein & Marias, and Zimmerman Reed all fall into this group.⁹ Additionally, because these firms have relatively low

⁸ Locks Law Firm does not object to use of a lodestar and multiplier, but wants a committee to come up with a proposed allocation. ECF No. 8709, at 2.

⁹ Only Rose Klein and Zimmerman Reed suggest what their multipliers should be, namely, 1.5 and 2.0 or greater, respectively. ECF No. 8576, at ¶ 5 and ECF No. 8722, at ¶ 40.

lodestars, either due to a low number of hours, or low hourly rates, or both, they complain that the methodology is incorrect. *See, e.g.*, ECF No. 8701 (Anapol Weiss), at 1-3, 14-15.¹⁰

28. Allocations of attorneys' fees in class cases, as distinct from aggregate awards of attorney's fees,¹¹ are often accomplished through the lodestar with multiplier method. *E.g., In re Cathode Ray*, 2016 WL 6909680, at *3 (finding, as to "Lead Counsel[']s proposed multipliers on the various lodestars ranging from 0.5 to 2.98," that Lead Counsel's proposed allocation of \$158.6 million fee was fair and reasonable, except for adjustments to four firms' fees in total amount of approximately \$1.4 million); *In re Initial Pub. Offering Sec. Litig.*, 2011 WL 2732563, at *5 (approving use of adjusted lodestar with multiplier to arrive at allocation); *In re Vitamins Antitrust*

¹⁰ Anapol Weiss takes issue with Seeger Weiss' hourly rates as compared to its own. ECF No. 8701, at 14, 14 n.7. First, Seeger Weiss' hourly rates of \$895 and \$985 for partners have previously been approved. *See, e.g., In re Pfizer Sec. Litig.*, No. 04-cv-9866 (LTS) (HBP) (S.D.N.Y.), at ECF Nos. 713-13, at 6 (Nov. 11, 2016) and 727 (Dec. 21, 2016) (Seeger Weiss submitted hourly partner rates ranging from \$850 to \$985 in case in which court approved attorneys' fee award requested, which was 28% of \$486 million settlement). Also, our rates are well within the range of rates for partners at New York and Philadelphia complex litigation firms, especially as compared with the hourly rates of some others who participated in this litigation. *See, e.g.*, ECF No. 7151-6 (Levin), at 11 (hourly rates over \$1,000), ECF No. 7151-7 (Locks), at 9 (hourly rate of \$900), ECF No. 7151-9 (Nast), at 8 (hourly rate of \$800), and ECF No. 7151-16 (Girardi), at 6 (hourly rate of \$1,100). (As noted in my Opening Allocation Declaration, the hourly rates of Levin and Girardi were capped at \$990 for this purpose. *See* ECF No. 8447, at nn.3 & 4.) Finally, in referring to the lower hourly rates that Seeger Weiss submitted in *McDonough v. Toys R Us, Inc.*, No. 06-cv-00242 (E.D. Pa.), Anapol does not mention that the rates were for time that Seeger Weiss attorneys spent on that case *ten years ago*, in 2007, which fees were initially submitted in 2011, and then resubmitted in 2014. *See also* ECF 8720-2 (Tarricone), at 11 (making same misleading reference to *McDonough* case as Anapol).

¹¹ As detailed in the Fee Petition, in the Third Circuit the proper analysis as to the aggregate award of attorneys' fees is to use the percentage-of-recovery method, with a lodestar cross-check. *See* Fee Petition [ECF No. 7151-1], at IV.A, IV.C; *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) ("it is sensible for district courts to 'cross-check' the percentage fee award against the 'lodestar' method") (citing *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998)). The allocation, however, is separate from the aggregate award.

Litig., 398 F. Supp. 2d at 236 (condoning use of multipliers applied to lodestar to allocate common benefit fees).

29. Some complain that my allocation is subjective, but, multipliers applied to lodestar figures are, by their very nature, unavoidably subjective. The Court asked for my opinion as to the law firms’ and lawyers’ relative contributions, and the assignment of specific multipliers to each firm’s lodestar was the most suitable method available to factor in my assessment. *See Fitzpatrick Supp. Decl.*, at ¶ 3.

30. Overlaid upon the quantitative lodestars, the multipliers that I propose reflect my impressions as to what these lawyers did, qualitatively, to help bring about this historic Settlement, to obtain final approval, and to ensure that the Settlement survived multiple appeals by objectors. *See In re Agent Orange Prods. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987) (“[o]bviously, the needs of large class litigation may at times require class counsel, in assessing the relative value of an individual attorney’s contribution, to turn to factors more subjective than a mere hourly fee analysis [but] ... the distribution of fees must bear some relationship to the services rendered”). The best way to reflect firms’ relative contributions is by applying a multiplier to their respective lodestars. *Cf. In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 600 (3d Cir. 1984) (quality multipliers are in the nature of a bonus or penalty).

31. I recognize that in deciding how to allocate fees, “[w]hat is important is that the district court evaluate what class counsel actually did and how it benefitted the class.” *In re Prudential Ins. Co.*, 148 F.3d at 342. As such, in applying the multipliers to arrive at the suggested allocations, my focus was on what these lawyers did and how that work benefitted the Class.

32. Prof. Brian Fitzpatrick noted in his initial Declaration, dated October 10, 2017, submitted in support of my proposed allocation that the range of multipliers I suggest, from 0.75

to 3.885, a spread of 1:1.52, is not only a reasonable spread, but “is more equitable than the spreads in the other cases of which [he is] aware.” ECF No. 8447-2, at ¶ 10.

33. Some contend that Professor Fitzpatrick’s declaration submitted in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, No. 15-md-2672-CRB (N.D. Cal.), is at odds with the declaration that he submitted here in support of my proposed allocation because, in that case, he observed that the “lodestar approach [has fallen] out of favor in common fund class actions” and in his “opinion, it does more harm than good to consider class counsel’s lodestar when awarding fees under the percent method.” See ECF No. 8701 (Anapol), at 14 n.8; ECF No. 8720-2 (Tarricone), at 10 n.6.

34. Such a criticism, however, compares apples to oranges. In *In re VW “Clean Diesel,”* Professor Fitzpatrick was called upon to opine in the context of the *aggregate* fee award. Here, he was asked to weigh in on my proposed *allocation* among those counsel allegedly conferring a common benefit. As such, Professor Fitzpatrick’s opinion in *In re VW “Clean Diesel”* is not at all inconsistent with that offered in connection with allocation and the use of lodestars with multipliers here.¹² See Fitzpatrick Supp. Decl., at ¶ 3.

35. One can look at numerous cases over decades as to percentages of common funds that were awarded in order to gauge what would be fair and reasonable to compensate the lawyers in the aggregate for fees and expenses in class action cases. For 2006 and 2007, most mean and median aggregate attorneys’ fee and expense awards were between 25% and 30% of the common

¹² Notably, the allocation in *In re VW “Clean Diesel”* was delegated to lead counsel and was not publicly disclosed. See 2017 WL 3175924, at *4 (awarding \$121 million in attorneys’ fees, “to be allocated by Plaintiffs’ Lead Counsel among the PSC firms and additional counsel performing common-benefit work”).

fund. *See* ECF No. 7151-28 (Prof. Fitzpatrick's article submitted with Fee Petition at Ex. Y), at 25.

36. In contrast, there are no similar data to guide subjective allocations as among various counsel contributing to the ultimate result of a class action settlement or award in connection with particularized common benefit work done by each of numerous law firms. That is why courts look to lead counsel.¹³ *See supra* at ¶¶ 16-17 (citing cases).

Several Firms Lay Claim to Credit for the Same Roles/Same Work – Identification of the NFL's Wrongdoing and Scope of Players' Injuries and Early Case Filings; and Responsibility for the Public Relations Upswing in Sympathy for NFL Players' Plight

37. Numerous firms assert that they were involved early, doing the groundwork in researching the medicine and the NFL's conduct, and/or that they filed the first cases. *See* ECF No. 8556 at ¶¶ 2, 16 (Lukasevic) (claiming to have begun researching the case a decade ago and filing the first lawsuits with co-counsel in 2011, following 2010 publication of compelling scientific research); ECF No. 8697 (Hagen), at ¶ 2 (becoming involved with co-counsel in early 2011 and filing several of the initial lawsuits); ECF No. 8701 (Anapol), at 4-6 (filed first case in federal court and seeking nationwide class); ECF No. 8719 (Girardi), at ¶¶ 9, 19 (filed first complaint against NFL in July 2011); ECF No. 8720 (Tarricone), at ¶ 18 (claiming to have begun being retained by clients in early 2012 and having 135 lawsuits on file as of July 2012); ECF No. 8721 (McGlamry), at ¶ 3 (claiming involvement since early 2011 and to have filed several of initial

¹³ Anapol suggests some type of benchmark analysis, factoring in the type and the quality of work done by each firm. ECF No. 8701, at 2-4. I considered those factors in reaching the multipliers. That is why I propose a robust 2.5 multiplier for Anapol. Conducting a different subjective analysis would not change my recommendation that, in my estimation, considering the contributions of others, Anapol should receive approximately \$4.6 million in fees of the approximately \$107.7 million available to compensate for common benefit time. As noted elsewhere in this Declaration, this is my opinion. The Court will decide upon the ultimate allocation.

lawsuits); and ECF No. 8722 (Zimmerman), at ¶¶ 2-3 (beginning in early 2011, attended organizational meetings, including with Jason Lukasevic, and filed first complaints by December 2011).

38. It is not possible that all of these firms were first. Nor is it reasonable to give them all higher multipliers solely for allegedly winning the race to the courthouse.

39. Numerous firms also maintain that they were instrumental in the public relations campaign, including finding the public relations firm (CLS) that was ultimately hired. ECF No. 8576 (Rose Klein), at ¶ 4 (averring active participation in selection of and consultation with CLS, as a member of Communications Committee); ECF No. 8697 (Hagen), at ¶¶ 6, 8 (prepared PowerPoint presentation outlining what would be purpose of Communications and Public Relations Committee (“CPRC”) and participated in process that led to hiring of CLS); and ECF No. 8720 (Tarricone), at ¶¶ 12.a, 13 (“I Personally recruited the public relations firm that was eventually retained”; “[t]he success of our PR rollout on June 7, 2012 was due in large part to careful, extensive and intensive planning and coordination, in which I played a leading role throughout”).

40. Putting aside the work of the paid media expert, CLS, these firms further contend that the Communications Committee’s efforts drove the re-shaping of public opinion, which they claim “cannot be overstated.” *See also* ECF No. 8697 (Hagen), at ¶¶ 10-11, 17 (mentioning CLS’s efforts almost as an aside, and claiming responsibility, along with Tarricone, Marks, Rosen and McGlamry, for change in public perception of NFL players, from being “greedy” and having brought “frivolous” litigation, to being entitled to more than NFL was willing to pay; asserting that “[n]o other work performed by other committees, subcommittees or law firms added as much value to the overall success of the case as did the work of the CPRC”); ECF No. 8720 (Tarricone), at ¶

15 (“By all accounts, [the committee’s] work was extremely effective and was instrumental in bringing the NFL to the settlement table.”); and ECF No. 8721 (McGlamry), at ¶ 8 (contending that “Communications Committee’s work brought about a sea [of] change in public opinion” and that “was due almost entirely to the incredible work done by the Communications Committee, under the direction of Anthony Tarricone and Steve Marks and the ongoing work of David Rosen, Bruce Hagen and me, working in conjunction with a public relations firm,” bringing “[s]ubstantial pressure on the NFL to resolve” the litigation).

41. Actually, the importance of public relations *can* be overstated – in fact, it is being greatly overstated by these very members of the CPRC. *See supra* at n.5 (pointing out that communications efforts were meant to ensure that accurate information reached Class Members and inaccurate information was dispelled, not to drive public opinion).

42. With so many firms all laying claim to being the “pioneers” of this litigation and to spearheading the public relations campaign that supposedly brought the NFL to its knees, the inevitable result is a dilution of all of their relative contributions as to each of these factors.

43. Furthermore, while being first to bring a lawsuit is important, it certainly does not support a large common benefit fee award when others performed virtually all of the *post*-filing work to bring about the Settlement, obtain final approval, and defend the Settlement through multiple appeals.

44. To be sure, it cannot be denied that public opinion is a consideration that must be addressed in litigation of this magnitude, with a defendant as consumer-driven as the NFL, such that it was important enough to retain a firm, like CLS. This litigation, though, was not about “spin,” as these counsel who object to my proposed allocation believe. Rather, it was

predominantly about good lawyering – negotiating and structuring a settlement that would provide real benefits to Class Members and pass muster in the courts.

45. The firms that make much of being the “first to file” and being active on the PRPC did little else to warrant an award of common benefit fees.

46. In reality, there was no other work to give these law firms, particularly once the Term Sheet was signed.¹⁴ I assigned the available work to my own firm, and others, like Professor Issacharoff, the Levin firm, and certain other Court-appointed “Class Counsel” and “Subclass Counsel,” who were better suited to and experienced in the kind of work that was required: detailed negotiations on the fine points of the deal; high-level briefing before this Court, the Third Circuit, and the Supreme Court; and appellate advocacy.

¹⁴ Mr. McGlamry complains that since 2013, in contrast to the time period prior to the signing of the Term Sheet, I failed to hold leadership meetings or convene conference calls. ECF No. 8721, at ¶ 39. *See also* ECF No. 8724 (McCorvey), at ¶ 16. Contrasting the assigned duties in this case with the duties of the PSC in *In re Zyprexa Prod. Liab. Litig.*, 467 F. Supp. 2d 256, 266 (E.D.N.Y. 2006), including “initiating, coordinating and conducting all pretrial discovery,” Mr. McGlamry laments, “[t]his is simply not how a[n] MDL coordination is supposed to operate.” ECF No. 8721, at ¶ 40 (typographical error in original). He ignores the realities of this case. Mr. McCorvey incredibly notes, in support of his contention that he is entitled to more common benefit fees, that he was appointed to the Discovery/Document Repository Committee and the Third Party Discover[y]/Privilege (NFL teams and colleges) Committee. ECF No. 8724, at ¶ 28 (typographical error in original). But there was no formal discovery in this case – the Court *stayed* discovery. Although I spent not insignificant time and effort to keep the PSC informed, holding leadership meetings with lawyers who were not going to be assigned work would not have been a productive use of time and certainly would not have inured to the common benefit of Class Members. Nevertheless, to be clear, I kept PSC members in the loop as to what was going on. My efforts to do so included email communications with all members of the PEC and PSC, and regular telephone communications with any plaintiff’s counsel wanting information from me or to provide me with information. Indeed, at times I spoke with Mr. McGlamry on a weekly basis and with Mr. Zimmerman on a monthly basis. I was always available to those who desired to speak with me.

52. As such, I did not arbitrarily exclude this time when collecting the time for the Fee Petition, or in terms of allocation. Rather, I simply followed the Court’s directive, one that is also fairly typical in the context of MDLs. Pre-MDL time is ordinarily considered to be spent in furtherance of the interests of a firm’s individual clients, not for the common benefit.

53. Should the Court determine that this pre-MDL time, or some portion thereof, should be compensable as common benefit time, I suspect that other firms – including my own, inasmuch as Seeger Weiss also logged considerable pre-MDL time going back to 2010, *see infra* n.22 – will want the opportunity to supplement their submissions to account for such time.¹⁵

Complaints That Time Spent Communicating with Individual Clients Was Not Credited as Common Benefit Time Are Unfounded

54. Similarly, as is also typical in MDL cases, CMO-5 includes in the “Non-Compensable Time Categories,” “time related to litigating the claims of individual clients.” ECF No. 3710, at 4. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 197 (3d Cir. 2005) (noting that “[o]nly work that actually confers a benefit on the class will be compensable”).

55. Despite this clear provision, certain firms question why time spent communicating with their clients is not credited as common benefit time. *See, e.g.*, ECF No. 8724 (McCorvey), at ¶ 25 (“Members of the PEC and PSC, however, were specifically instructed **NOT** to include any work on behalf of any individual class member, including communications with such individual

¹⁵ It should be noted that all of these firms that will share in any distribution of funds from the Attorneys’ Fees Qualified Settlement Fund are benefiting from the work of Seeger Weiss lawyers in (1) conducting the audit of time and expenses to support the request that the Court make an award of fees and expenses, and (2) handling all of the fee petition briefing requesting the aggregate fee and expense award. Seeger Weiss assumed the responsibility to do this work as the Court-appointed Co-Lead Class Counsel and, importantly, is not seeking to be reimbursed for this time.

class members, in their time detail in support of the common-benefit fee application.”) (emphasis in original).¹⁶

56. Complaining of allegedly disparate treatment, some firms contrast that while I claim common benefit time for my and my firm’s communications with Class Members, we did not permit them to include this time as common benefit time. *See, e.g.*, ECF No. 8721, at ¶¶ 25-26 (Mr. McGlamry complains that he was instructed to remove time pertaining to communications with individual clients from his common benefit time submission, while I included that time as part of my firm’s common benefit time).

57. This criticism is unavailing. The time that Seeger Weiss lawyers spent communicating with Class Members was not in furtherance of my firm’s individual cases but, rather, for the common benefit of the Class. My firm had relatively few individually-retained clients and has waived contingent fees as to those. As such, when Seeger Weiss lawyers have spoken with Class Members, the communications are common benefit time. The majority of those Class Members were pro se, although some reached out to Seeger Weiss for information when their individually-retained counsel were non-responsive.

58. In contrast, lawyers individually retained by large numbers of clients, who communicated with those clients in connection with their individual cases, did so for their clients’ benefit and not for the common benefit of the Class. It is a bedrock principle of class action practice that time spent on individual clients’ cases, including communicating with those clients

¹⁶ In certain instances, law firms defended my firm’s challenges to submitted time reflecting communications with individual clients by arguing that the time was spent convincing those Class Members to support the settlement and to not opt-out or object. In those limited instances (and not in an across-the-board manner), my firm ultimately allowed some of this time to be submitted as common benefit time, because limiting opt-outs, objections, and appeals was in the interest of the Class as a whole.

about the status of the case, is not compensable as common benefit time. That anyone even makes the argument that time spent communicating with one's own clients should be compensated as common benefit time highlights a lack of understanding as to what constitutes common benefit tasks.

59. As the Third Circuit has noted:

Nor is there any reason for the class as a whole to compensate large numbers of lawyers for individual class members for keeping abreast of the case on behalf of their individual clients, keeping their individual clients informed, or duplicating the efforts of lead counsel. If individual class members wished to have the services of additional counsel in addition to class counsel, they should bear the expense themselves.

In re Cendant Corp. 404 F.3d at 201-02 (citing *In re Auction Houses Antitrust Litig.*, No. 00 Civ. 0648, 2001 WL 210697, at *4 (S.D.N.Y. Feb. 26, 2001)). Besides, lawyers who spent time communicating with their own clients or rendering other services to them *will* be compensated for that work – through the fees they receive on their individual retainers. They are not, however, entitled to double-dip by *also* being paid common benefit fees for such services.¹⁷

Detractors Claim Entitlement to Higher Multipliers Due to the Fact That They Have Many Individually-Retained Clients – According to Them, More Clients Resulted in Greater Risk and Also “Critical Mass” to Bring the NFL to the Settlement Table

60. Many contend that they have large numbers of clients and that, therefore, their risk of not getting paid, should plaintiffs ultimately have failed to prevail, was much greater. *See* ECF No. 8697 (Hagen), at ¶¶ 20, 26-27 (having represented 500 clients at one time with substantial risk of non-payment); and ECF No. 8709 (Locks), at ¶¶ 2.D n.1, 43-44 (taking on “immense risk” in

¹⁷ For instance, in one of Mr. McGlamry's Notices of Attorney's Lien, he claims that he is entitled to be compensated under his retainer agreement with the former client for three dozen teleconferences with the client to provide updates, and he specifically sets forth the dates of these calls. *See* ECF No. 8291-1, at ¶ 5. Under Mr. McGlamry's flawed logic, he should also be paid for these calls as common benefit time.

having represented 1,400 Class Members at outset of case and during settlement negotiations in 2013, and now 1,100, in contrast with Seeger and Levin representing no more than a dozen clients).

61. Similarly, some of those objecting declare that their having taken this risk has benefited the Class as a whole because it helped achieve the “critical mass” to bring the NFL to the Settlement table. ECF No. 8722 (Zimmerman), at ¶ 3 (speaking of “coordinated strategy to build a ‘critical mass’ of individual complaints to pressure the NFL to work towards a common solution”); ECF No. 8724 (McCorvey), at ¶¶ 30, 31 (“[h]ad it not been for firms like ours, there would not have been a critical mass to cause sufficient pressure on the NFL to reach a settlement”; a grandiose statement given that Mr. McCorvey claims to represent only 50 Class Members). *See also* ECF No. 8720 (Tarricone), at ¶¶ 17-20 (representing over 250 Class Members at one point, but, now representing 200 and claiming that “without lawyers willing to risk millions of dollars in time and money bringing individual cases, the litigation would have gone nowhere”); ECF No. 8721 (McGlamry), at ¶¶ 2, 17, 45 (representing 404 clients, along with co-counsel, and claiming that the “individual lawsuits were a – if not the – major factor leading to the settlement” and “[h]ad it not been for firms like ours, there would not have been sufficient pressure on the NFL to reach a settlement”); ECF No. 8709 (Locks), at ¶¶ 37, 43 (“LLF filed a vast number of individual claims and class cases in state and federal courts for the purposes of putting maximum pressure on the NFL;” and “LLF took on immense risk by representing and managing effectively 1400 retired players at the outset of this case.”).

62. As such, these objecting counsel criticize me for not rewarding with higher multipliers that asserted risk and pressure their large inventories allegedly brought to bear.

63. The simple answer to this critique is that the risk of amassing large numbers of clients has its own obvious reward – payment for services rendered under the corresponding

individual retainer agreements. But to reward out of common benefit funds the mere amassing of clients, no matter how prodigious the results, would be patent double-dipping. Further, none of these counsel cite objective proof that this purported critical mass is what drove the NFL to settle.

64. Moreover, under these lawyers' theory, counsel with large inventories should always reap the biggest common benefit allocations – no matter the contributions of others who steered the litigation or the developments in a case – because, they contend large numbers of lawsuits create pressure on any defendant to settle. Surely, though, that is not the test. *See In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, No. MDL 05-1708(DWF/AJB), 2008 WL 5382338, at *22 (D. Minn. Dec. 23, 2008) (“A large case inventory in itself does not result in common benefit time.”), *vacated in part on other grounds*, 2010 WL 145278 (Jan. 8, 2010).

65. Finally, it is not to say that large numbers of individually-filed cases may not have been a factor in bringing about the Settlement. Objecting counsel, though, do not point to any authority suggesting that merely amassing large case inventories mandates a premium on one's lodestar for common benefit fee purposes – and, as noted above, merely signing up lots of clients simply does not equate to common benefit work.

In Criticizing Me for Not Doing More to Combat “Poaching,” Allegedly Further Increasing Their Risk of Non-Payment, These Critics Misunderstand That My Duty Is to the Class Members, Not to Ensuring that Individually-Retained Lawyers Maintain Their Rights to Contingent Fees

66. A few firms criticize me for not undertaking efforts to prevent other lawyers from soliciting their clients, allegedly resulting in their being discharged and former clients retaining these “poachers.” ECF No. 8724 (McCorvey), at ¶ 30 (“My firm formerly represented many more than our current 50 [clients]. Many of our clients were ‘poached’ by other counsel, who, given the Settlement agreement and Mr. Seeger’s failure to support enforcement of individual contingency

fee agreements, apparently told our (now former) clients that they would handle their claims for a lower contingency fee.”); ECF No. 8697 (Hagen), at ¶ 22 (averring that I “created the environment” whereby “poaching” could occur because I refused “to address the enforceability of individual attorneys’ fees contracts in the terms of the settlement itself”); ECF No. 8721 (McGlamry), at ¶ 10 (claiming that my “failure to address the enforceability of individual contingency-fee agreements” created an environment wherein law firms were discharged, necessitating filing of liens); ECF No. 8722 (Zimmerman), at ¶¶ 7-9 (intimating that if I had taken action, Zimmerman firm would not have had 71 clients poached by other firms’ improper solicitations). They conclude that their increased risk in this regard is partially my fault.

67. One firm condemns me for having *truthfully* stated that Class Members need not retain individual counsel to participate in the Settlement,¹⁸ claiming that this accurate representation caused him to be fired by clients who then retained other lawyers. ECF No. 8720 (Tarricone), at ¶¶ 18, 21. Another claims that “the Settlement framework created an environment that encouraged former NFL players to shop for lower contingent fees or try to avoid them altogether.” ECF No. 8721 (McGlamry), at ¶ 24.

68. These criticisms are astonishing. My duty was and is to Class Members, not to individually-retained lawyers. My focus was in attempting to prevent Class Members from being misled and to further that goal I directed the creation of the Ethics Committee. I thus allowed for time spent combatting misinformation being spread by lawyers attempting to “poach” others’

¹⁸ When speaking publicly about the Settlement (and in individual communications with Class Members), although I have said “you don’t need a lawyer,” that was in the context of Class Members participating in the Settlement. In other words, one did not need an attorney merely to register and to participate in the Settlement program. At the same time, I have also expressed my personal opinion that if a Class Member is working with a lawyer, he should continue to do so.

existing clients to be counted as common benefit time. To be clear, however, in creating the Ethics Committee, the priority was the protection of Class Members—not the backend protection of fees for counsel terminated by their former clients.¹⁹

69. Moreover, the record in this MDL demonstrates that I have taken very seriously the matter of what information is being fed to Class Members by third parties (lenders/asset purchasers, claims services providers, and lawyers looking to poach clients). My firm has undertaken significant efforts, both before and after the Effective Date of the Settlement to stem misinformation about the Settlement being disseminated by law firms and others for the sole purpose of recruiting clients or otherwise profiting from the Settlement.²⁰ *E.g.*, ECF Nos. 7175, 7347, 7811, 8392, 8470.

70. My advice to these counsel was that, in order to help combat poaching of their clients, they should ensure that their clients were well informed and that they kept in contact with them – the corollary being that they should have made sure that they had sufficient staff to handle the number of clients who retained their firms. Seeger Weiss has fielded dozens of calls wherein Class Members contacted my firm seeking advice because they were unable to get their

¹⁹ Some claim entitlement to larger common benefit fees based upon membership on the Ethics Committee, whose task was supposed to be preventing the spread of misinformation about the Settlement by unscrupulous lawyers. In these responses to my proposed allocation, however, it seems that the mindset of the Committee Members was that the actual goal was preserving individual retainer fees, rather than ensuring that Class Members were not deceived, which is the reason why I created the committee. ECF No. 8721 (McGlamry), at ¶ 10 (suggesting that Ethics Committee was focused on poaching itself and the resultant lien issues, *i.e.*, the lawyers' contingent fees, rather than on clearing up confusion and disseminating accurate information to the Class Members on issues other than individual representation); *see also* ECF No. 8722 (Zimmerman), at ¶¶ 8-9.

²⁰ Incredibly, Zimmerman Reed attempts to take credit for my firm's efforts to combat deceptive practices, and seemingly, for the filing of a lawsuit against RD Legal by the federal and state governments. ECF No. 8722, at ¶¶ 10, 35.

individually-retained lawyer to return their call, or simply noting that they had not heard from their attorney in months, if not years.

Accusations That I Overstated the Contributions of Seeger Weiss LLP and Certain Other Firms and Persons Because We Allegedly Had Little Risk Are Unsupported and Meritless

71. Several firms contend that I have recommended excessive compensation for my firm, Levin, Sedran & Berman, and Professor Issacharoff. *See* ECF No. 8709 (Locks), at ¶2.D, 20, 42; ECF No. 8721 (McGlamry), at ¶ 48; ECF No. 8697 (Hagen), at ¶ 25.

72. With few exceptions, these objecting counsel do not take issue with the quality of the work,²¹ but, rather, they contend that the proposed multipliers are too high because, they allege, the risk of non-payment was low. *See, e.g.*, ECF No. 8722 (Zimmerman), at ¶ 26 (“Seeger Weiss deserves to be well compensated for its outstanding work on this case and in obtaining a Settlement that provides significant benefits to Class members.”).

73. Addressing the criticism of the multipliers I assigned to others first, beginning with Professor Issacharoff, the detractors are wrong on the facts.

74. They claim that Professor Issacharoff’s “role in this case began later. when the case posed lessrisk.” ECF No. 8722 (Zimmerman), at ¶ 16 (typographical errors in original); *accord*

²¹ Mr. Locks claims that I made three errors. ECF No. 8709, at ¶¶ 22-25. He contends that I erred in agreeing to a capped monetary award fund in the first settlement presented to the Court, that I should not have allowed deferral of claims processing until after final approval, and that I should not have agreed to release amateur leagues and teams in the first settlement presented. The first and third criticisms are puzzling because they have been moot for well over three years. Those aspects were not included in the preliminary settlement that this Court approved in July 2014. Additionally, Mr. Locks was one of the lawyers who signed the initial Settlement Agreement presented in January 2014. *See* ECF No. 5634-2, at 93.

The second criticism, that claims processing should have gone forward without waiting for final approval, is vacuous. Had the Settlement not received final approval, or had final approval been overturned or the Settlement ordered modified on appeal, then a great deal of time, resources, and money would have been needlessly squandered. At any rate, it should be noted that Seeger Weiss did begin, along with Brown Greer and Garretson Resolution Group, to gear up for implementation well before the Effective Date.

ECF No. 8709 (Locks), at ¶ 42 (claiming that Professor Issacharoff was not involved at the start of the litigation). That contention is uninformed because Professor Issacharoff's involvement, though, began much earlier than at the appellate stage. At the onset of settlement negotiations, I sought Professor Issacharoff's guidance, as a recognized authority in, among other areas, aggregate litigation, and he was involved in every aspect of structuring the legal issues in the Settlement. *See* Issacharoff Decl. [ECF No. 7151-18], at ¶ 2 ("I have been consulted by lead attorneys for the plaintiffs since the inception of the consolidated litigation in the MDL ... my central work on this case began during the period of intensive settlement negotiations. My primary role was to serve as a legal advisor to lead counsel Chris Seeger on matters relating to class resolution of this case.").

75. Mr. Zimmerman questions whether Professor Issacharoff's work was done on a contingency fee basis, merely because Professor Issacharoff noted that the hourly rate used to calculate his lodestar was based upon current rates for non-contingent fee work. ECF No. 8722, at ¶ 38. Most certainly, Professor Issacharoff, like the rest of us who performed common benefit work, has yet to be paid.

76. Mr. Locks contends that because Professor Issacharoff represented no clients and invested no money, his risk was low, and therefore his multiplier was too high, as compared to that of Locks Law Firm. ECF No. 8709, at ¶¶ 20, 42; *accord* ECF No. 8721 (McGlamry), at ¶ 50 (noting that Professor Issacharoff did not have clients). That assertion is specious. Because Professor Issacharoff has no clients, *all* of his work was for the common benefit of the Class and no one can accuse him of double-dipping. Furthermore, had the Settlement failed, Professor Issacharoff would have no individual cases to prosecute – all of his considerable work, done for the benefit of the Class alone, would have been for naught. Thus, to say that he incurred little risk is sheer nonsense. Moreover, he carried his own expenses, which remain unreimbursed.

77. What is more, none of these detractors could have provided the essential guidance on the settlement negotiations so as to ensure that the case was properly postured to survive inevitable appeals, nor could they have directed the briefing and handled the appellate arguments in the manner that Professor Issacharoff did. Indeed, their begrudging him the multiplier that I propose simply highlights the fact that these critics are ignorant as to the drivers that not only resulted in the Settlement, but also which protected it from being overturned by the small but determined bands of objectors.

78. As to complaints that I treated the Levin firm too favorably, I can personally attest to the fact that Mr. Levin and his partners were “in the trenches” with Seeger Weiss. In addition to Mr. Levin’s involvement as Subclass Counsel in the negotiation of the Term Sheet, lawyers from his firm worked alongside of lawyers from my firm and myself on countless occasions, until the wee hours of the morning, on weekends, and on holidays, to negotiate with the NFL’s lawyers and pen the painstakingly detailed Settlement Agreement and to assist in drafting and/or researching the countless briefs that were filed in this Court in connection with obtaining final approval of the Settlement. Other than Mr. Levin’s firm, I cannot imagine to whom I would have turned for the level of assistance that was required, both in terms of intellect and experience and in terms of being available on short notice and for extended periods of time.

79. Several objecting counsel maintain that I myself incurred little risk. *See* ECF No. 8697 (Hagen) at ¶¶ 20, 27 (“Mr. Seeger, who seemed to have no individual clients on contingent fees, took on no risk ... [a]fter being hand-picked by the Court to be Co-Lead counsel, Mr. Seeger’s risk was all but eliminated. ... Mr. Seeger, however, thanks to his manufacturing of the fee structure of the settlement and his appointed position as co-lead counsel, not to mention his

settlement discussions with the NFL prior to the MDL having even been formed,²² has taken on no risk whatsoever, or minimal at best.”).

80. Similar to Mr. Hagen, Messrs. McGlamry, Tarricone and McCorvey, contend that “Mr. Seeger’s risk, if any, of non-payment, has been minimal since the inception of MDL-2323.... Moreover, at least since the late-August 2013 Term Sheet included \$112.5 million in common-benefit attorneys’ fees, Mr. Seeger’s risk has been practically extinguished.” ECF No. 8721 (McGlamry), at ¶ 49; *accord* ECF No. 8720-2 (Tarricone), at 2 (“Seeger’s proposal fails to recognize the substantial risk assumed by Kreindler and other firms, which is particularly notable in comparison to the little risk, if any, his firm had in this litigation. The overwhelming majority of the lodestar generated by Seeger is for work performed after settlement was assured and the fee fund was established.”); ECF No. 8724 (McCorvey), at ¶ 10 (“any risk of Mr. Seeger not being paid was effectively extinguished when the NFL Parties agreed not to oppose or object to a petition of attorneys’ fees and costs up to \$112.5 million as part of the Settlement in summer 2013”).

81. These contentions by the detractors accentuate the level of their naivety. They failed, and clearly still fail, to appreciate that this Settlement could have been undone in the Third Circuit (where it was attacked at two different phases) or in the United States Supreme Court. As

²² Never having raised this issue before, Mr. Hagen now points to comments that I made at a meeting in January 2012, to the effect that I had had discussions with the counsel for the NFL regarding a possible settlement. Disregarding that he improperly discloses information by flouting the work product doctrine and Fed. R. Evid. 408, Mr. Hagen tries to paint those early settlement discussions as sinister because there was no MDL structure at the time. To be clear, I and other lawyers from my firm had brought a yet-to-be-filed complaint into a meeting with counsel for the NFL in 2010 and we had settlement discussions regarding a case we intended to bring on behalf of a group of retired players. A players’ strike occurred, however, and the NFL then incorporated the neurocognitive benefit into 2011 Collective Bargaining Agreement, assuming that would ward off any future litigation. I merely passed on to the group of plaintiffs’ lawyers with pending cases at that meeting in January 2012 the insights I had gleaned from the 2010 discussions. There was nothing inappropriate in my having had those discussions almost two years earlier.

such, they not only underestimate what was achieved, they underestimate my efforts, as well as the efforts and commitment by the lawyers at my firm, as well as Professor Issacharoff and the lawyers at the Levin firm.

82. A similar argument was made, and rejected, in *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 582 F.3d 524, 543 (3d Cir. 2009), where one of those who objected to the attorneys' fees awarded claimed that the risk "dissipated after the Settlement Agreement was reached and, pursuant to its terms, Wyeth agreed to fund escrow accounts from which Class Counsel would be compensated." The Third Circuit disagreed, determining that the district court had analyzed the risk of non-payment, not only at the outset, but, also after the approval of the settlement agreement, and found that the risk continued.

83. Here, the risk continued even after the Settlement Agreement was reached, because the Settlement was attacked as early as immediately after preliminary approval (by the Faneca Objectors, through their July 2014 Rule 23(f) petition to the Third Circuit), and then during the Rule 23(e) final approval proceedings (which were spiritedly contested), in a dozen Third Circuit appeals filed after final approval, and two certiorari petitions. In short, to suggest that I and my firm faced little risk of non-payment for our work once the ink was dry on the Settlement is simply absurd.

84. Incredibly, these objecting counsel assert that while my risk was allegedly eliminated, *their* risk remained because they had individual clients, because many of the clients discharged them, or because their ability to ultimately collect the percentage contingent fee that their clients had agreed to at the outset was coming under scrutiny. They seem to ignore the fact that had the Settlement not survived the Third Circuit appeals and the certiorari petitions, Seeger Weiss would have been without any remuneration for the 21,000 hours and \$1.5 million in

expenses we spent, while those lawyers with individual clients would still have had cases to litigate and the potential to recover fees and expenses.

85. As to the differential in the multipliers between my firm, the Levin firm and Professor Issacharoff and the other law firms, as noted by Brian Fitzpatrick in his Declaration, the multipliers used herein represent one of the tightest spreads on record. *See* ECF No. 8447-2, at ¶ 10.

86. Finally, in terms of real money at risk, as opposed to unreimbursed time, my firm has the highest unreimbursed expenses at almost \$1.5 million, with the next closest firm being Anapol with a little over \$1 million in common benefit expenses. The most vociferous detractors opposing my proposed allocation, for the most part, had less than \$130,000 in common benefit expenses at risk. *See* ECF Nos. 7151-26, at 8 (Tarricone - \$120,832); 7151-22, at 9 (McGlamry - \$125,137); 7151-21, at 8 (McCorvey - \$104,156). Some had even less than \$20,000 in hard costs. ECF Nos. 7151-16, at 8 (Girardi - \$5,509); 7151-20, at 8 (Lukasevic - \$11,824); 7151-17, at 9 (Hagen - \$16,998).

In Summary, My Previous Assessments, as to the Complaining PEC and PSC Firms' Respective Contributions for the Common Benefit, Remain Unchanged

87. To recapitulate, nothing that any of these firms had to say in their counter-declarations or responses has caused me to rethink my recommended allocations as to them. I now turn to issues specific to each firm.

88. Girardi | Keese (Thomas V. Girardi) [ECF No. 8719] - My assessment that the firm should receive no multiplier stands. The firm's submission in opposition to my proposed allocation focuses predominantly on the desire to submit pre-MDL time and time spent on individual cases as common benefit time and to be credited for filing early cases. I followed CMO-5 and I do not believe this firm should receive a multiplier.

89. Goldberg, Persky & White, P.C. (Jason Lukasevic) [ECF No. 8556] - I am not persuaded that this firm deserves anything more than to be reimbursed for its lodestar and expenses. Notably, unlike other firms opposing my proposed allocation, neither Mr. Lukasevic, nor his firm had a court-appointed position on either the PEC or PSC. While the firm may have had a leading role in bringing cases initially, emphasizing in its submission that Mr. Lukasevic was mentioned in the books *Concussion* and *League of Denial*, the fact of the matter is that Mr. Lukasevic and his firm did little common benefit work. My assessment that the firm should receive no multiplier stands.

90. Hagen, Roskopf & Earle, LLC (Bruce A. Hagen) [ECF No. 8687] – Nothing in the vitriolic submission by this firm has persuaded me that it deserves a multiplier. Putting aside that the submission is predominantly about criticizing me, rather than seeking to elevate work done by the firm, it places inordinate weight upon public opinion in bringing about the Settlement. Notably, the submission speaks to no actual legal work done by the firm for the common benefit of the Class, except for a PowerPoint presentation created for a meeting in 2012. The emphasis on the firm’s risk related to being engaged by some 500 individual clients is unavailing. My recommendation for no multiplier stands.

91. McCorvey Law, LLC (Derriel C. McCorvey) [ECF No. 8724] - My assessment that the firm should receive no multiplier stands. Even in the firm’s response in opposition to my proposed allocation, the firm did little more in the way of affirmative support for a higher multiplier than mention that Mr. McCorvey was a member of the PSC, on the Communications Committee, the Discovery/Document Repository Committee and the Third Party Discovery /Privilege Committee; that he communicated with his clients and certain other Class Members; and that his firm worked to get his clients registered and set up for BAP exams. ECF No. 8724, at

¶¶ 2, 21-22, 27-29. The submission focused largely on criticizing me for not “address[ing] whether individual fee agreements are enforceable.” *Id.*, at ¶¶ 5-7, 11, 33. No multiplier is warranted for this work.

92. Pope McGlamry, P.C. (Michael L. McGlamry) [ECF No. 8721] - My assessment that the firm should receive no multiplier stands. The firm’s submission, like many others, touts early involvement and alleged concomitant risk, the importance of purportedly being responsible for a change of public opinion and alleged that the “critical mass” associated with having many clients brought the NFL to the Settlement table. Like Messrs. McCorvey and Zimmerman, Mr. McGlamry was very focused, as evidenced by this submission, on individual contingent fee issues, which are not related to the common benefit of the Class. The firm deserves to be compensated for its work, but deserves no multiplier in my opinion.

93. Rose, Klein & Marias LLP (David A. Rosen) [ECF No. 8576] - My assessment that the firm should receive no multiplier stands. In its submission in response to my proposed allocation, the firm touts having researched and prepared a memorandum on workers’ compensation issues. While the memorandum was helpful and the firm did a workmanlike job on it, one legal assignment out of the countless legal research projects that went into obtaining and defending the Settlement, does not warrant a multiplier.

94. Zimmerman Reed LLP (Charles S. Zimmerman) [ECF No. 8722] - My assessment that the firm should receive no multiplier stands. The firm, like others, makes the arguments that it should be elevated for early involvement, and for having been retained by many clients and thereby providing the “critical mass” to induce the NFL to settle. As evidenced by its submission in opposition to my proposed allocation, the firm was very focused on protecting its individual

retainer agreements rather than anything that inures to the common benefit of the Class. I maintain that no multiplier is warranted for this firm.

95. Kreindler & Kreindler LLP (Anthony Tarricone) [ECF No. 8720] - My assessment that the firm should receive a multiplier of 1.25 stands. Like many others, this firm's submission in opposition to my proposed allocation focuses on early involvement, having been retained by many clients, and the importance of the public relations campaign. I did recognize already that this firm's contributions were worthy of a multiplier. I am not persuaded that their level of contribution to the common benefit was worth more than a 1.25 multiplier, nor am I persuaded to use a method other than the lodestar with multiplier method or that appointment of a third party is warranted.

96. Locks Law Firm (Gene Locks) [ECF No. 8709] - My assessment that the firm should receive a multiplier of 1.25 stands. The firm contributed little following the negotiation of the Term Sheet, aside from allegedly persuading its clients to support the Settlement and to not opt out or object.²³ The firm did not assist with any of the briefing. The submission in opposition to my proposed allocation has not persuaded me to suggest that the Court allow Class Counsel to work out the allocation amongst ourselves or that the Court should appoint a third party.

97. Podhurst Orseck, P.A. (Steven C. Marks) [ECF No. 8728] - My assessment that the firm should receive a robust 2.25 multiplier stands. The firm's work was described in my prior Opening Allocation Declaration. The responsive submission by the firm was not substantive, so there is no need for me to address it herein.

²³ It is important to note that, during confidential settlement negotiations, Mr. Locks gave an interview to *Businessweek*, which jeopardized settlement negotiations and caused him to be removed from the negotiating team.

98. Anapol Weiss (Sol Weiss) [ECF No. 8701] - My assessment that the firm should receive a 2.5 multiplier stands. This was the third highest multiplier, behind the multipliers I suggested for my firm and Professor Issacharoff. To be sure, Messrs. Weiss and Coben did good work, particularly Mr. Coben's work with the medical experts and on the BAP testing protocol. When he contends, however, that he "worked at a grueling pace" and "around the clock," ECF No. 8701, at 11, in connection with negotiating the Term Sheet, Mr. Weiss forgets that I was there, too, and more importantly, that I, lawyers at my firm, lawyers at the Levin firm, and Professor Issacharoff all worked at this pace often and for longer periods of time, during the detailed negotiations of the actual Settlement Agreements and on the dozens of briefs that were filed at three judicial levels. Aside from reviewing finished products and occasionally commenting thereon, Mr. Weiss was not involved during these times. His explanation that he worked more efficiently and thus billed less time, is belied by the fact that his firm handled precious little of the drafting. The submission has not persuaded me to suggest a higher multiplier for Anapol or to propose a different methodology to the Court for allocation. A 2.5 multiplier is more than generous.

Objectors' Counsel's Claims to Entitlement to Common Benefit Fees and Expenses Lack Merit

99. As to the claims for entitlement of common benefit fees by, in particular, counsel for the Armstrong Objectors, Alexander Objectors, and the Faneca Objectors, it is noteworthy that they made kitchen-sink objections to virtually every facet of the Settlement, hoping one or more would "stick" and be credited to them. Their vehement opposition on numerous fronts to the proposed Settlement delayed the distribution of benefits to the Class. They cannot claim to have earned fees for allegedly "'contributing' to a type of settlement that [they] declared [they] would

‘never, ever’ entertain. Rhetoric has consequences.” *Drazin v. Horizon Blue Cross Blue Shield of N.J., Inc.*, 832 F. Supp. 2d 432, 445 (D.N.J. 2011).²⁴

Armstrong Objectors’ Counsel’s Response

100. The Armstrong Objectors complain that my proposed allocation did not address or analyze their fee petition. ECF No. 8532, at 2 (¶ 3). There was no need for me, however, to address their petition de novo and explain why they are not deserving of any fees. The Armstrong Objectors performed no common benefit work. Their only claim to fees is as objectors, but for the reasons set forth in detail at pages 56-63 of the April 10, 2017 omnibus reply memorandum in further support of the Fee Petition [ECF No. 7464, at 67-74], the Armstrong Objectors’ role in the final approval proceedings and appeals from the Court’s final approval decision was not at all constructive and they achieved nothing for the benefit of the Class. Their meritless objections, Third Circuit appeal, and Supreme Court certiorari petition managed only to inflict unconscionable delay on many suffering Class Members by postponing the implementation of the Settlement Agreement for nearly twenty-one months. Hence, they deserve no award for the reasons fully

²⁴ E.g., ECF Nos. 6201 [*passim*] (Faneca Objectors’ attacking Settlement as “a capitulation” and “a sell out,” including for failure to compensate “death with CTE” after preliminary approval date, alleged under-inclusiveness of BAP, unreasonableness of monetary award offsets, “false and misleading” class notice, and allegedly complex and ambiguous claims process that Class Members must navigate), 6233 [at 10-35] (Armstrong Objectors’ objections, arguing, *inter alia*, that numerous ailments were not compensated, the monetary awards were insufficient, that award offsets were flawed, the “Death with CTE” cutoff date was irrational, the BAP participation requirements were onerous, the creation of a designated pool of BAP physicians was unfair, the Settlement wrongly allowed the NFL unlimited appeals, the Settlement’s funding was inadequate, the Settlement did not take scientific advances into consideration, the release of the NFL Parties was too broad, and the Education Fund was an improper *cy pres* fund), 6237 [*passim*] (Alexander Objectors’ objection, attacking Settlement as not fair, adequate, or reasonable on sundry grounds, including due to alleged insufficiency of monetary awards; monetary award offsets; failure to compensate death with CTE after date of preliminary approval; failure to provide for future scientific advances, allegedly vague, ambiguous, or undisclosed provisions; and withholding of underlying analyses and supporting documents).

explained in the Fee Petition reply memorandum. That discussion is incorporated herein by reference. Any further discussion in my opening allocation declaration of the Armstrong Objectors' claim to fees would have been redundant.

101. The Armstrong Objectors take issue with my recommendation that the Court award \$150,000 to the Faneca Objectors, whereas I recommended no award for them. They assert that they did "as much, if not more, meaningful work and achieved as much, if not more for the Class than Faneca Objectors' counsel." ECF No. 8532, at 3 (¶ 4). That is completely without merit. As I previously acknowledged, both at page 55 of the omnibus reply memorandum in support of the Fee Petition [ECF No. 7464, at 66], and in paragraph 16.a of my allocation recommendation declaration [ECF No. 8447, at 13], the Court had appointed counsel for the Faneca Objectors as liaison for the objector groups and to coordinate the presentation of objections as the Rule 23(e)(2) Fairness Hearing [ECF No. 6344]. The Armstrong Objectors simply have no legitimate grounds to contend that they performed as much work or achieved as much for the Class.

Responses of Neurocognitive Football Lawyers, PLLC and The Yerrid Law Firm

102. The Motion to Prioritize [ECF No. 8723], in which the Allen Retired Players joined [ECF No. 8729], was not a genuine response to my allocation recommendations. Nor could it have been, because the attorneys who filed that submission performed no common benefit work. Rather, the Motion to Prioritize went beyond the scope of this Court's October 12, 2017 Order [ECF No. 8448] by improperly contending that a fee award ought to be deferred until most Class Members have received their monetary awards and that the Court should deny a holdback or set-aside from monetary awards. The Motion to Prioritize also requested that the Court appoint a Special Master to handle fee allocations. All of these arguments are completely without merit. They were addressed in the separate response to the Motion to Prioritize that was filed on November 9, 2017

[ECF No. 8914], which is incorporated herein by reference. Repeating the points made in that response here would serve no purpose, especially because, as noted above, the attorneys who made this submission seek no common benefit fee award.

Response of Alexander Objectors' Counsel

103. The arguments set forth in the declaration of attorney Lance Lubel [ECF No. 8725], counsel for the so-called Alexander Objectors, also warrant no separate discussion as to all but two of the arguments presented therein. Mr. Lubel's declaration mostly references, repeats, or recapitulates sundry arguments and submissions that he has made in the course of his relentless opposition to the Fee Petition, including his request for leave to take discovery in connection therewith; his attacks on the valuation of the Settlement; his opposition to a percentage-of-the-common-fund method for determining a fee award and insistence on a lodestar approach; his alternative argument that any fee award should be equivalent to a smaller percentage than the nine percent that is being requested [*see* ECF No. 7151, at 55]; his attacks on the cumulative lodestar of the attorneys who performed common benefit work; his motion to compel compliance with CMO-5; and his opposition to the adoption of a five-percent set-aside. *See* ECF No. 8725, at 1-9 (at ¶¶ 2-10).

104. All of these arguments are improper because they are not in keeping with what the Court invited in its October 12, 2017 Order [ECF No. 8448]. In any case, we have covered or addressed these arguments at pages 27-56 of the opening memorandum in support of the Fee Petition [ECF No. 7151-1, at 38-67] and 4-18 of the omnibus reply memorandum in support of it [ECF No. 7464, at 15-29], in the consolidated memorandum in support of the motion to strike the Alexander Objectors' unauthorized sur-reply to Class Counsel's omnibus reply memorandum and in opposition to their motion take discovery of Class Counsel [ECF No. 7606]; in the reply

memorandum in support of Class Counsel's motion to strike their unauthorized sur-reply [ECF No. 7710], and in the combined response to the Alexander Objectors' motion to compel compliance with CMO-5 and to their unauthorized and misnamed "First Supplement" to their Fee Petition objections [ECF No. 8440]. The aforementioned discussions are incorporated herein by reference.

105. Mr. Lubel raises some additional arguments in his declaration that are similarly improper, but which I address here for the sake of completeness of the record. He maintains that the allocation of fees is typically performed by a committee [ECF No. 8725, at 7 n.10], but that is not so. As discussed above, courts in the numerous cases did not utilize committees, even when so-called mega-funds were involved. *See supra* at ¶ 17; *see also* ECF No 8914, at 8-9 & n.8 (citing additional cases). Thus, the fact that a committee may have handled the allocation of the combined \$600 million in fees and expenses that was awarded in *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, No. 2179, 2016 WL 6215974, at *20–21 (E.D. La. Oct. 25, 2016), is not particularly instructive, let alone determinative, here.

106. Mr. Lubel's reliance on Judge Ambro's concurring opinion in *In re Diet Drugs* [ECF No. 8725, at 7 n.10], like Mr. Locks' reliance, is misplaced for the reasons noted above. *See supra* at 9 & n.6. At any rate, because the Court ultimately will make the allocation, Mr. Lubel's assertion that I alone am deciding which attorneys or firms will be paid and how much [ECF No. 8725 at 7 n.10] is demonstrably inaccurate.

107. No more availing is Mr. Lubel's enumeration of work that he claims to have performed and for which he now seeks an award of \$450,000. *See* ECF No. 8725, at 10-12 (¶ 11(i)-(xvi)). This work was not done at my direction or that of anyone else in the appointed Plaintiffs' leadership. In fact, most of it relates to Mr. Lubel's pursuit of *unsuccessful objections*

to the Settlement Agreement, and an equally unsuccessful Third Circuit appeal from this Court's overruling of those objections. *See, e.g., In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 383-84, 401-02, 413, 419, 423 (E.D. Pa. 2015), *aff'd*, 821 F.3d 410 (3d Cir. 2016). That Mr. Lubel's claimed objection-related work was "left out" of the Fee Petition [ECF No. 8725, at 9] was for a sound reason: it did not benefit the Class. If Mr. Lubel believed the contrary – that his fruitless endeavors somehow conferred a *measureable* benefit on the Class – he had ample opportunity to cross-petition and make his case for an award of fees, as did certain other objectors (like the Faneca and Armstrong Objectors), but he did not do so. At this point, the time to do so has long since passed. The Court should reject his belated fee request.

108. Finally, Mr. Lubel argues that I have taken positions detrimental to the Class in matters of settlement implementation. ECF No. 8725, at 12. His assertion is not only meritless, but inappropriate, for it has nothing to do with a fee *allocation*. Like the Motion to Prioritize, Mr. Lubel has improperly used the response to my allocation recommendations that the Court permitted in its October 12, 2017 Order [ECF No. 8448] to vent an unrelated grievance – and also to once again denigrate my efforts on behalf of the Class.

Faneca Objectors' Counsel's Response

109. The Faneca Objectors [ECF No. 8726] similarly repeat or recapitulate the arguments that they previously asserted in support of their request for an award of \$20 million in fees. The reasons why they are not entitled to such an outsize award are set forth in detail at pages 42-56 of the omnibus reply memorandum in support of the Fee Petition [ECF No. 7464, at 53-67]. These arguments are incorporated herein by reference. As discussed in that memorandum, these objectors should not be rewarded for the plethora of unsuccessful arguments and filings that they presented to this Court and to the Third Circuit because those submissions and arguments did not

benefit the Class. Also, the Faneca Objectors wrongly take credit for the post-Rule 23(e)(2) Fairness Hearing modifications to the Settlement Agreement, and, at any rate, they have overvalued those changes.²⁵ Nor has any court ever rendered a fee award to an objector of the enormity that the Faneca Objectors seek. Class Counsel has already distinguished as inapposite the authorities that they cite in support of the magnitude of their fee request. Finally, the requested award of \$20 million would inequitably yield a more favorable multiplier to the Faneca Objectors on their counsel's lodestar than Class Counsel or any other attorney who performed common benefit work would receive.

Response of Jones' Objectors' Counsel

110. Rather than presenting any specific arguments, James Capretz' counter-declaration is more in the nature of a protective filing in support of his earlier petition for an award of fees [ECF No. 7364]. *See* ECF No. 8727, at 4-6 (¶¶ 5-8). In that petition, Mr. Capretz sought an award of \$300,000, based on an ascribed value of \$20 million to the post-Fairness Hearing modification to the Settlement Agreement to include NFL Europe playing time towards Eligible Seasons for purposes of qualifying for monetary awards. *See* ECF Nos. 6235, 6481-2 (at 13, 41-42 [amending sections 2.1(kk) and 6.7(c), and eliminating section 6.7(c)(i)]). Mr. Capretz contended that this

²⁵ To the extent that the Court concludes otherwise and finds that the Faneca Objectors were the driving force behind the post-Fairness Hearing modifications to the Settlement Agreement [ECF No. 6481] and that the value of those modifications is greater than what Class Counsel's expert has opined [ECF Nos. 7464 (at 53-55), 7464-12 (at 4 (Table 1))] and closer to the valuation of the Faneca Objectors' putative expert CPA [ECF Nos. 7366-1 (at 7), 7550-1 (at 5-8)], any award to the Faneca Objectors nonetheless should be markedly less than the enormous \$20 million that they have requested. Such a huge award – amounting to almost *nineteen percent* of the roughly \$107 million in the Attorneys' Fees Qualified Settlement Fund that is available for an award of fees (as opposed to reimbursement of common benefit expenses) – is higher than the fee that I recommended for every firm that performed common benefit work, save mine, and would be nearly *twice* as high as the next highest allocation that I recommended, which was for the significant contributions of Subclass Counsel Arnold Levin's firm. *See* ECF Nos. 8447, at 13-14 (¶ 17), 8447-1. Such a gross disparity would be unreasonable and unjust.

change had been brought about by his objection to the Settlement. ECF No. 7364, at 4-8, 11. Mr. Capretz deserves some commendation for not having inundated the Court with kitchen-sink objections. Still, the Court should deny his fee request for the reasons discussed at pages 63-64 of the omnibus reply memorandum in support of the Fee Petition [ECF No. 7464, at 74-75]. That discussion is incorporated herein by reference. By way of summary, the Court should reject Mr. Capretz' request because several other objectors (including the Faneca Objectors) had raised the same issue concerning NFL Europe playing time. A \$300,000 award for an unoriginal 4-1/2 page objection to the Settlement is unwarranted.²⁶

Conclusion

111. In summary, the proposed allocation that I previously presented to the Court continues to be my recommendation.

112. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November, 2017.

/s/ Christopher A. Seeger

CHRISTOPHER A. SEEGER
Co-Lead Class Counsel

²⁶ To the extent that the Court concludes otherwise and determines that Mr. Capretz deserves some recognition for having raised the issue of credit for NFL Europe playing time, nevertheless, any fee award should be decidedly less than the \$300,000 that he requested.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and a supporting document were served on all counsel of record via the Court's ECF system on November 17, 2017.

/s/ Christopher A. Seeger

Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re National Football League Players' Concussion Injury Litigation

No. 2:12-md-02323-AB

SUPPLEMENTAL DECLARATION OF BRIAN T. FITZPATRICK

1. I filed a declaration in this Court on October 10, 2017, opining that the fee allocation proposed by lead counsel in this case was reasonable. Several law firms filed responses to the proposed allocation, and lead counsel asked me to review them and weigh whether they alter my opinion that the proposed allocation here is reasonable. They do not.

2. The gravamen of the opposition to the proposed allocation is not that lead counsel failed to credit the work of various law firms as sufficiently important, but, rather, that lead counsel failed to give the law firms enough work to begin with. That is more of a challenge to how lead counsel prosecuted this case than it is to the allocation of fees, and there is little the court can do about it now: the court cannot go back in time and ask lead counsel to reallocate the work. But even if this were the time and the place to complain about how lead counsel prosecuted the case, I will note that nothing about how the work was allocated in this case strikes me as unreasonable. When this case began, it looked like the typical mass tort MDL: the defendant's product allegedly caused thousands of people many different sorts of physical injuries, and it looked like it might take years of discovery, examination of experts, motions practice, and bellwether trials before the thousands of cases might settle. MDLs that like require lead counsel to farm work out to a legion of different lawyers through an elaborate committee structure. Although that's how this case began, it's not how it ended. This case ended as a class action settlement before discovery—expert or otherwise—had even begun. In other words,

unlike most mass tort MDLs, this case ended up being almost entirely about how to devise a fair settlement that could be achieved through Fed. R. Civ. P. 23. That resolution did not require legions of law firms working through an elaborate committee structure; it required a small group of very creative and dedicated lawyers. And that's exactly who handled this case.

3. With respect to the proposed fee allocation itself, as I noted in paragraph 10 my opening declaration, as far as I am aware, this is the most equitable range of lodestar multipliers that has ever been used in a fee allocation. None of the law firms opposed to the proposal disputed that fact. Instead, some of the law firms oppose using the lodestar method at all. Indeed, some of the firms went so far as to imply that it was inconsistent with one of my declarations in the *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* for me to support using the lodestar method here. See ECF No. 8701 (Anapol), at 14 n.8; ECF No. 8720-2 (Tarricone), at 10 n.6. But my declaration in *Volkswagen* was directed to the reasonableness of an aggregate fee award, not to the reasonableness of the allocation of an aggregate award. I generally oppose the lodestar method and support the percentage method for aggregate awards because the percentage method creates better incentives for class counsel. But the percentage method is not as viable for the allocation because we do not have a pre-existing market of fee percentages to draw upon. For example, for the aggregate award, we know that contingency-fee lawyers usually charge 33% for their work and we know that courts usually award successful class action contingency-fee lawyers 25%; we can start with these numbers and work our way to a proper aggregate percentage. But where would we start for the allocation? Is there a pre-existing market that tells us what a lawyer assigned to do communications should get as a percentage? The lawyers assigned to discovery? To settlement negotiations? Not that I am aware of. This is why, absent an agreement among the lawyers on

1

 t

N

S

T

1

2. In said Reply, Mr. Seeger made certain statements concerning the origination of this litigation.

3. Specifically, Mr. Seeger notes that “[n]umerous firms assert that they were involved early, doing the groundwork in researching the medicine and the NFL’s conduct, and/or that they filed the first case.” *Id.* at ¶ 37.

4. He then lists seven law firms that purportedly fit this category. *Id.*

5. He then states “It is not possible that all these firms were first.” *Id.* at ¶ 38.

6. However, by Mr. Seeger’s own recitation, only two firms claim to have filed the first lawsuit, Goldberg, Persky & White and Girardi Keese. *Id.* at ¶ 37

7. But, Girardi Keese was co-counsel with Goldberg, Persky & White in the filing of the original Complaint of the litigation that was transferred to this Court by the Judicial Panel on Multidistrict Litigation as MDL-2323. *See* July 19, 2011 Complaint, *Maxwell v. NFL, et al*, Case No. BC465842 (Cal. Super. Ct.), attached as Exhibit A.

8. Undersigned counsel respectfully requests leave to file a short Sur-Reply Counter-Declaration to add one article to the record in this matter, Michael Sokolove, *How One Lawyer’s Crusade Could Change Football Forever*, Nov. 6, 2014, at MM42, which was the cover story of the New York Times Magazine on November 9, 2014. *See* Proposed Sur-Reply Counter-Declaration attached as Exhibit B.

9. As well as quoting Mr. Seeger’s acknowledgment of my firm filing the first Complaint¹ of this litigation, said article supplements my firm’s previous Counter-Declaration, which is necessary because of Mr. Seeger’s dismissive statement that “[i]t is not possible that all these firms were first” in his Omnibus Reply Declaration.

¹ “***Being the first to file is incredibly important***,” [Seeger] said. “[Luckasevic] took a risk.” Sokolove at 8 (emphasis added).

10. There will be no prejudice to any parties should this Court grant this instant Motion.

WHEREFORE, the undersigned counsel respectfully requests that this Court grant leave to file the attached Sur-Reply Counter-Declaration of Jason E. Luckasevic.

Dated: November 21, 2017

Respectfully submitted,

GOLDBERG, PERSKY & WHITE, P.C.

/s/ Jason E. Luckasevic

Jason E. Luckasevic, Esquire

jluckasevic@gpwlaw.com

PA I.D. #85557

11 Stanwix Street, Suite 1800

Pittsburgh, PA 15222

(412) 471-3980 (phone)

(412) 471-8308 (facsimile)

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and any supporting document(s) were served on all counsel of record via the Court's CM/ECF system on November 21, 2017.

/s/ Jason E. Luckasevic
Jason E. Luckasevic

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323
Case No. 12-md-2323 (AB)

Kevin Turner and Shawn Wooden,
on behalf of themselves and others
Similarly situated,

Civil Action No. 14-cv-0029

Plaintiffs,

vs.

National Football League and NFL
Properties LLC, successor-in-interest
to NFL Properties, Inc.

Defendants.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**MOTION FOR LEAVE TO FILE A SURREPLY DECLARATION IN RESPONSE
TO OMNIBUS REPLY DECLARATION OF CHRISTOPHER A. SEEGER AS TO
RESPONSES, OBJECTIONS AND COUNTER-DECLARATIONS TO
PROPOSED ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES,
PAYMENT OF COMMON BENEFIT EXPENSES, AND PAYMENT
OF CASE CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES**

Charles S. Zimmerman of Zimmerman Reed LLP, member of the Plaintiffs' Steering Committee ("PSC") and Co-Chair of the PSC Ethics Committee, respectfully moves the Court for leave to file a surreply declaration in response to Christopher A. Seeger's Omnibus Reply Declaration, filed on November 17, 2017. The proposed

surreply, not to exceed two pages, would address Mr. Seeger's statements concerning Zimmerman Reed's work on behalf of the Ethics Committee to prevent the spread of misinformation to the Class. In his Omnibus Reply Declaration, Mr. Seeger incorrectly claims Zimmerman Reed focused only on preserving individual retainer agreements with clients. *See* Christopher A. Seeger Omnibus Reply Declaration [ECF 8934], at ¶¶ 66-70, n.19, n.20. This is grossly inaccurate, and the undersigned counsel would like to respond and show that, since the formation of the Ethics Committee, Zimmerman Reed has primarily directed its efforts towards stymying unethical treatment of the Class and resolving confusion amongst former players and their families.

WHEREFORE, the undersigned counsel respectfully requests the Court grant leave to file a surreply declaration of Charles S. Zimmerman not to exceed two pages.

Respectfully submitted,

ZIMMERMAN REED LLP

Dated: November 22, 2017

s/ Charles S. Zimmerman
Charles S. Zimmerman – MN #120054
J. Gordon Rudd, Jr. – MN #222082
Brian C. Gudmundson – MN #336695
Michael J. Laird - MN #0398436
1100 IDS Center, 80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile: (612) 341-0844
Email: Charles.Zimmerman@zimmreed.com
Gordon.Rudd@zimmreed.com
Brian.Gudmundson@zimmreed.com
Michael.Laird@zimmreed.com

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

National Football League and NFL
Properties LLC, successor-in-interest to
NFL Properties, Inc.,

Defendants.

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

No. 12-md-2323 (AB)

MDL No. 2323

Hon. Anita B. Brody

MOTION FOR LEAVE TO FILE
SURREPLY DECLARATION OF MICHAEL L. MCGLAMRY
IN RESPONSE TO CHRISTOPHER A. SEEGER'S OMNIBUS REPLY DECLARATION

Michael L. McGlamry, of Pope McGlamry, PC, member of the Plaintiffs' Steering Committee (or "PSC") and Co-Chair of the Ethics Committee, among other Plaintiffs' leadership positions, respectfully moves the Court for leave to file a surreply declaration in response to Christopher A. Seeger's Omnibus Reply Declaration, filed November 17, 2017 (ECF No. 8934).

The purposes of this surreply are to address Mr. Seeger's statements concerning Pope McGlamry's work on behalf of the Ethics Committee to stem the spread of misinformation to the Class, to explain that Mr. Seeger failed to respond to an important argument regarding whether it is appropriate to bill time spent communicating with individual class members as common-

benefit time, and to note the significant opposition to his proposed fee allocation. Mr. Seeger incorrectly accuses both Zimmerman Reed and Pope McGlamry of focusing on preserving individual retainer agreements with their own clients, instead of seeking to protect the Class from the attempts to provide them misinformation and seek to unethically profit at Class Members' expense. (*See* ECF No. 8934 at ¶¶ 66-70 & n. 19-20). Those accusations are incorrect and should not remain unanswered, as my firm and my Co-Chair's firm worked tirelessly to eliminate confusion and protect the best interests of all Class Members and to stop the unethical conduct of those who sought to do otherwise. (*See also* ECF No. 8945 (Motion for Leave to File Surreply by C. Zimmerman)).

A proposed Order granting the motion is attached as Exhibit A. The proposed short Surreply Declaration of Michael L. McGlamry is attached hereto as Exhibit B.

WHEREFORE, the undersigned counsel respectfully requests that the Court grant him leave to file the Surreply Declaration of Michael L. McGlamry.

Respectfully submitted this 28th day of November, 2017.

s/ Michael L. McGlamry
Michael L. McGlamry
GA Bar No. 492515
POPE, MCGLAMRY, KILPATRICK
MORRISON & NORWOOD, P.C.
3391 Peachtree Road, N.E., Suite 300
Atlanta, GA 30326
Ph: (404) 523-7706
Fx: (404) 524-1648
efile@pmkm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Clerk of the court using the CM/ECF system, which will send a notice of electronic filing to all Counsel of Record.

This 28th day of November, 2017.

/s/ Michael L. McGlamry

Michael L. McGlamry

Georgia Bar No. 492515

E-mail: efile@pmkm.com

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 5th day of December, 2017, it is **ORDERED** that the following Motions for Leave to File a Surreply Declaration in Response to Omnibus Reply Declaration of Christopher A. Seeger are **DENIED**:

- Motion filed by Jason E. Luckasevic (ECF No. 8937)
- Motion filed by Charles S. Zimmerman (ECF No. 8945)
- Motion filed by Michael L. McGlamry (ECF No. 8963)

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this __5TH__ day of December, 2017, it is **ORDERED** that the Alexander Objector's Motion to Compel Compliance with Case Management Order No. 5 (ECF No. 8396) is **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Hon. Anita B. Brody

Plaintiffs,

Civ. Action No. 14-00029-AB

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

3. I am aware my recommendations would reduce the amount of attorney's fees that the class members in this case would be required to pay their lawyers. In making these recommendations, I strongly believe that contingent fee lawyers – and class counsel – serve a valuable social function. They deserve to be paid for that work. At the same time, the class action nature of this case means that the Court has a fiduciary duty to the absent class members: it must ensure that the legal fees that they pay are not unreasonable, particularly given the many different types of lawyers in a case of this structure. That obligation is especially pertinent in a case involving monetary awards to a vulnerable population of plaintiffs. It is my expert opinion that my recommendations strike a proper balance between fairly compensating the lawyers for the services that they have provided – or will provide – while ensuring that the absent class members do not pay fees that are, in total, unreasonable.

4. I was assisted in preparing the report by four Harvard Law students and one legal assistant. I relied entirely on the paper record. A list of the roughly 1,000 documents that I reviewed is attached as Exhibit A. I received one direct communication from an interested party simply pointing me to certain parts of the written record; it had no effect on my opinions as I had already reviewed the referenced documents. That letter is attached as Exhibit B.

I. FACTUAL BACKGROUND

5. The facts of the case are well known to the Court and interested parties and need not be repeated here. For purposes of my opinions, the pertinent facts concern the potential attorney's fees that class members may be asked to pay, the differing grounds and processes for

those fee payments, and the work performed by the attorneys seeking them. The following paragraphs set forth those facts.

8. *Class action fees.*⁶ Under the terms of the Settlement Agreement, the NFL agreed to pay “class attorneys’ fees and reasonable costs.”⁷ It further agreed not to contest an application for fees and costs that does not exceed \$112.5 million.⁸

a. *Amount sought.* By motion dated February 13, 2017, Co-Lead Counsel initially sought precisely this \$112.5 million amount, broken down into expenses totaling \$5,682,779.38 and fees totaling \$106,817,220.62.⁹ When Class Counsel’s \$106.8 million fee request is expressed as a portion of the \$720.5 million net present value of the 65-year settlement, it amounts to 14.83% of the total settlement value and its \$5.7 million expense request constitutes another .8%.¹⁰ Throughout this report, I therefore assume that if the Court

⁶ The Court has stated that it will decide the amount to pay Class Counsel and has directed that I need not speak to that question directly. The succeeding discussion simply observes the numbers that have been proposed so I can put a placeholder in this part of my analysis. That placeholder will, of course, vary depending upon the Court’s ultimate determination of Class Counsel’s fee.

⁷ ECF No. 6481-1 at 81–82.

⁸ ECF No. 6481-1 at 82.

⁹ ECF No. 7151-1 at 14–15. In his allocation filing on October 10, 2017, one of the two Co-Lead Counsel seeks to allocate nearly \$2 million more than the \$112.5 million (\$114,206,652.28). The additional funds are \$338,602.08 in interest on the \$112.5 million since March 7, 2017, when it was deposited by the NFL, and \$1,368,050.20 of unused funds in a separate account set up to provide notice to the class. ECF No. 8447 at 4-5. For purposes of this limited discussion, I will use the \$112.5 million amount that the NFL agreed not to oppose and make no assumption about whether interest on that money, as well as the rollover from the notice fund, properly belongs to Class Counsel, to the class members, or to the NFL and/or whether the Court will approve an award of these extra monies to Class Counsel.

¹⁰ The precise calculations are set forth in Exhibit C. As explained there, Class Counsel set the \$106.8 million fee request against a total settlement value of \$1,163,425,000 (which yields 9.18%) to argue that their fee request constitutes “approximately nine percent of the value of the total relief secured for the Class.” ECF No. 7151-1 at 55. However, that is an apples-to-oranges comparison in that Class Counsel seek their fees now, while the bulk of the settlement (the Monetary Award Fund or MAF) will be distributed over 65 years. Thus, Class Counsel’s request that they get their fees at present must be set against the net present value of the settlement. See, e.g., *In re Diet Drugs*, No. 1203, 2000 WL 1222042, at *32 (E.D. Pa. Aug. 28, 2000) (“The

were to approve Class Counsel's request for \$112.5 million in fees and costs, Class Counsel would receive approximately 15.6% of the class's recovery in this matter.¹¹

b. *For whom.* The Court-appointed leadership structure of the multi-district litigation (or MDL) initially encompassed: two Co-Lead Counsel; a six law firm Executive Committee; an eight lawyer Steering Committee; and three liaison counsel.¹² As noted above, in certifying the class, this Court named six of these attorneys as "Class Counsel." One of the two Co-Lead Counsel presently seeks to allocate the requested class action fees and expenses among 24 law firms that he avers have undertaken work that has benefited the entire class.¹³ Many of

Settlement Agreement provides that for purposes of awarding attorneys' fees from Fund B, attorneys' fees should be awarded and paid as a percentage of or otherwise based on the net present value, as of the date of Final Judicial Approval, of the maximum amounts AHP may be legally obligated to pay to Fund B for the benefit of the settlement class pursuant to the principle of law expressed in *Boeing v. Van Gemert*, 444 U.S. 472 (1980).").

¹¹ This valuation is appropriate even though the fee award in this case will not literally come from a common pool of money. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) ("Although class counsel and GM contend (and the district court believed) that the fee was a separate agreement, thus superficially resembling the separate awards in statutory fee cases, private agreements to structure artificially separate fee and settlement arrangements cannot transform what is in economic reality a common fund situation into a statutory fee shifting case."); *see also Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014) (noting that "where the reality is that the fund and the fee are paid from the same source" that "arrangement 'is, for practical purposes, a constructive common fund,' and courts may still apply the percent-of-fund analysis in calculating attorney's fees").

This valuation is also appropriate even though this is a claims-made settlement and the total amount of the class's ultimate claims is presently unknown. Given the parties' expert actuarial calculations that underlie these valuations, there is no reason to substitute other projections. Moreover, it is appropriate to award class counsel a percentage based on the total amount made available to the class, even if the class ultimately claims less. *See* 5 William B. Rubenstein, *Newberg on Class Actions* § 15:70 (5th ed. 2016) (hereafter "*Newberg on Class Actions*"). This is particularly true where it is possible that the class may ultimately claim more and class counsel's percentage will be lower.

¹² ECF Nos. 64, 72.

¹³ ECF No. 8447-1 at 2.

these lawyers have protested their proposed allocation, although not their entitlement to a portion of the aggregate award.¹⁴ Another three attorneys have applied for payment from this aggregate fund on the ground that the services they provided (including in filing objections to the settlement) benefited the entire class as well;¹⁵ Co-Lead Counsel has proposed to allocate fees to two of these firms, in addition to the 24 firms or attorneys described above.¹⁶

9. *Common benefit fees.* Under the terms of the revised Settlement Agreement,¹⁷ “After the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel.”¹⁸ The Settlement Agreement further states that the NFL’s obligation to pay fees does not extend to these future fees and that the NFL has no interest in and takes no position on this issue.¹⁹

a. *Amount sought.* By its motion filed February 13, 2017, in addition to its 15.6% class action fee, Co-Lead Counsel ask the Court to approve a set-aside constituting 5% of each player’s MAF payment and to order the claims administrator to begin setting aside 5% of these payments.²⁰ If approved, the proposal would set-aside 5% of the \$950 million that the

¹⁴ ECF Nos. 8653, 8697, 8701, 8709, 8711, 8719-1, 8720, 8721, 8722, 8723, 8724, 8725, 8726, 8727, 8728, 8729.

¹⁵ ECF Nos. 7070; 7320/7323; 7364.

¹⁶ ECF No. 8447 at 13.

¹⁷ The 5% set-aside concept was not part of the parties’ initial Settlement Agreement that this Court rejected in January 2014. A discussion of the set-aside’s origins is set forth below. *See* Part III, *infra*.

¹⁸ ECF No. 6481-1 at 82.

¹⁹ *Id.*

²⁰ ECF No. 7151 at 2.

actuaries calculate will be distributed through the MAF,²¹ or \$47.5 million in total over 65 years, the net present value of which is \$26.85 million.²² For represented class members, the common benefit fee would be extracted from their lawyer's contingent fee and hence would not augment the total amount that class members would pay in fees; for *pro se* litigants, the 5% would come out of their recoveries.²³

b. *For whom.* If the Court approves a set-aside, the monies would be held in a common benefit account. Counsel would have to then separately petition for fees from this fund for work undertaken to “facilitate the Settlement program and related efforts of Class Counsel.”²⁴ It is therefore too early to know with precision who would be paid from this fund, but it is likely that one of the two Co-Lead Counsel would receive most or all of this money in the short term;²⁵ nonetheless, Co-Lead Counsel acknowledge, as they must, that the contemplated work will eventually need to be passed on to future generations of lawyers.²⁶

Separately Represented Plaintiffs, Individually Retained Plaintiff's Attorneys (IRPAs),
and Contingent Fee Contracts

10. *Separately represented plaintiffs.* While Class Counsel represent the interests of all class members in the aggregate, many individual class members also have their own lawyers. This MDL encompassed thousands of individual lawsuits filed by hundreds of players who were

²¹ ECF No. 7151-1 at 45 (citing ECF No. 6167 at 4).

²² The mean calculation of the net present value of the \$950 million MAF is \$537 million. ECF No. 6168 at 51. Five percent of that amount is \$26.85 million.

²³ ECF No. 7151-1.

²⁴ ECF No. 6481-1.

²⁵ ECF No. 8447-1 at 2 (implying that approximately \$4.7 million in 2017 lodestar is attributable to “future” work to be funded by the 5% set-aside, of which 87.4% is Seeger Weiss lodestar).

²⁶ ECF No. 7151-1 at 82; ECF No. 7464 at 30–31.

represented individually (or in groups) by their own lawyers.²⁷ Moreover, other players (or their families) retained individual counsel to represent them in the course of the class action proceedings. The class action settlement foreclosed all individual cases,²⁸ except for those pursued by players who opted out of the settlement,²⁹ and the class action notice advised players that, “You do not have to hire your own attorney.”³⁰ Nonetheless, about half (47% or 9,477 out of 20,376) of the parties that have registered for payment through the class action settlement are represented by their own attorneys.³¹

11. *Individually retained plaintiff’s attorneys (IRPAs).* The attorneys who represent individual players will be referred to as “individually retained plaintiff’s attorneys,” or IRPAs.³² The lawyers on the plaintiffs’ leadership team who seek class action fees also represent individual players and hence are IRPAs as well. Although nearly 10,000 registrants have IRPAs,

²⁷ ECF No. 6509 at 5 (“Since consolidation, about 5,000 players (‘MDL Plaintiffs’) have filed over 300 substantially similar lawsuits against the NFL Parties, all of which have been transferred to this Court.”) (footnote omitted).

²⁸ ECF No. 6510 at 6 (“All Related Lawsuits pending in the Court are dismissed with prejudice.”); *see also* ECF No. 6481-1 at Article XVIII and XIX.

²⁹ ECF No. 6510 at 7 (“The Opt Outs are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement Agreement or this Final Order and Judgment.”).

³⁰ ECF No. 6481-1 at 157.

³¹ ECF No. 8888-1 at 4.

³² The First Circuit first used this phrase 25 years ago. *See In re Nineteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603, 605 (1st Cir. 1992). Other courts have referred to these lawyers as “primary attorneys.” *See, e.g., In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 653 (E.D. La. 2010) (“The vast majority of these personal injury claims were governed by a contingent fee contract between the individual claimant and his or her primary attorney.”). Scholars have also used the phrase “non-lead lawyers.” *See* Charles Silver and Geoffrey P. Miller, *The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal*, 63 Vand. L. Rev. 107, 110 (2010) (hereafter “Silver and Miller, *Quasi-Class Action*”).

a handful of law firms represent large numbers of clients, plausibly close to half of all of the players with IRPAs.³³

12. *Contingent fee contracts.* Each IRPA has a contingent fee contract with his or her client. It is uncertain whether these contingent fee contracts, by their own terms, require payment to the contracting lawyer for recoveries secured through the class action rather than the lawyer's individual action.³⁴ Assuming they do, the amount that each player has contracted to pay his IRPA in this private contract is generally not publicly available. However, many

³³ These firms have shifting inventories and Co-Lead Counsel has alluded to problems of "poaching," ECF No. 8934 at 26-28, so it is difficult to pin down this number with certainty. However, six sets of firms appear to represent about 4,000 players altogether:

1. The Locks Law Firm reports that it currently represents "in excess of 1100 registered former players," ECF No. 8709 at 24, though it apparently represented as many as 1,400 at early times in the litigation, *id.* at 3 n.1.
2. Zimmerman Reed LLP and Pope McGlamry report that they jointly "represent well over one thousand retired NFL players individually in the MDL." ECF No. 8916 at 1.
3. Girardi Keese reports being "counsel for over 600 class members." ECF No. 8364 at 1.
4. Goldberg, Persky & White, P.C. stated in January 2017 that it "currently represents over 500 class members eligible to participate in the settlement in this action, pursuant to individual contingency fee agreements." ECF No. 7075 at 1.
5. Podhurst Orseck, P.A. states that "Podhurst and its various referral counsel have diligently represented nearly 500 class members in this action." ECF No. 7071 at 6.
6. The Anapol Weiss law firm states that it "has represented over 350 different NFL players during the course of this litigation." ECF No. 8701 at 13.

³⁴ The contracts tend to award the lawyer a percentage of "the amount recovered for the client." It may be arguable that Class Counsel, not any IRPA, "recovered" the payments any class member gets through this settlement fund and hence that the contingent fee contract is simply inapplicable. *See also* ECF No. 7353 at 1–2 (noting that "[r]etired NFL players who received a Qualifying Diagnosis prior to the Effective Date and their individual counsel entered into retainer/fee agreements based upon the assumption that Class Counsel would not be receiving any of the claimants' Monetary Award" and reporting that: "In some instances, those fee agreements call for a very small percentage (some as low as 1%) of the Monetary Award as the individual counsel's fee, because the individual counsel was not involved in and did not assist in obtaining the Qualifying Diagnosis. Instead, in those cases individual counsel is only assisting with the administrative issues regarding registration and the submission of claims.").

⁴⁰ ECF No. 7365 at 2 (“Plaintiff is currently being represented *pro bono* by Catherina Watters, who is a member in good standing of the California and Florida state bar associations (pro hac

13. The prior paragraphs enable me to map class members' potential fee and expense payments in Table 1, below:

TABLE 1
Potential Fees and Expenses Payable by Class Members

	Class members with lawyers	<i>Pro se</i> class members
Class Action Fees and Expenses	15.6%	15.6%
IRPA Fee (not including expenses)	1–45% 29% average ⁴¹	0%
Common Benefit Fee	0% (assessment paid by IRPA)	5%
TOTAL ⁴²	60.6% high 44.6% average ⁴³ 16.6% low	20.6%

vice admission to be submitted), and Joe H. Tucker Jr. and Kevin L. Golden of the Tucker Law Group located at Ten Penn Center, 1801 Market Street, Suite 2500, Philadelphia, PA 19103.”).

⁴¹ This average is derived from the lien data described above.

⁴² These numbers are slightly off because Class Counsel's fees and expenses are taken before the class member's recovery, while the IRPA's fees are taken out of the class member's recovery net of Class Counsel's fee and expenses. Thus, for example, a 60–64 year old with Parkinson's is slotted to receive \$1,000,000 net of Class Counsel's 15.6% fees and expenses, ECF No. 6481-1 at 122. This means the player's gross award is \$1,184,834 (\$1,000,000/.844) and Class Counsel's share is \$184,834. The player will then pay his IRPA, say, 29% of the \$1,000,000, or \$290,000, leaving him with a final award of \$710,000 and a total fee bill of \$474,834. His final \$710,000 award is 60% of the gross value of his award and his total \$474,834 fee payments are 40% of the gross award, not the 44.6% suggested in the Table. However, given that the IRPAs expenses are unknown – and taken off the top of the player's recovery – the numbers in the Table are a close approximation of the bottom line.

⁴³ This average is derived from the lien data described above.

recoveries.⁴⁷ Many courts, including the Third Circuit, have accordingly held that the judge overseeing the class action has a “fiduciary duty” to protect the absent class members.⁴⁸ This explains the unexceptional fact that Class Counsel in this case have submitted their \$112.5 million fee request to the Court for judicial approval.

16. The situation of each individual class member’s contingent fee agreement with his own lawyer stands on slightly different footing. Class members rarely have individually retained lawyers because class suits typically involve small amounts of money. Indeed, it is the meager nature of most class members’ claims that underlies the need for aggregate litigation: in small claims situations, class members will attract legal representation only by aggregating their claims and funding the lawyer’s fees out of the joint recovery.⁴⁹ Thus, the Rule 23 fee process for scrutiny of class counsel’s proposed fee – with notice to all absent class members and an opportunity to object – has no obvious application to individualized retainer agreements. The class members are not truly “absent” with regard to these agreements, as each has negotiated the contract with his own lawyer individually; moreover, no class member has a direct interest in the terms of another’s individual retainer agreement and hence does not need notice of it or an opportunity to object to it.

⁴⁷ *Id.* (noting that in seeking fees, “the role of the attorneys is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized”).

⁴⁸ *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 187–88 (3d Cir. 2005) (“In traditional common fund cases, the court acts almost as a fiduciary for the class, performing some of the roles—i.e., monitoring and compensating class counsel—that clients in individual suits normally take on themselves.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005), *as amended* (Feb. 25, 2005) (“At the fee determination stage, the district judge must protect the class’s interest by acting as a fiduciary for the class.”).

⁴⁹ For a discussion, see *Newberg on Class Actions*, *supra* note 11, § 1:7.

17. Nonetheless, there is no doubt that this Court possesses the authority to assess the reasonableness of each class member's contingent fee contract with his individually retained attorney. That is so because the Court has the inherent authority to regulate attorneys appearing before it,⁵⁰ and any attorney representing a player making a claim in this class action settlement is effectively appearing before this Court.⁵¹ Specifically, the Third Circuit has stated that: "in its supervisory power over the members of its bar, a court has jurisdiction of certain activities of such members, including the charges of contingent fees."⁵² In illuminating this authority, the Circuit has characterized it as a "court's *duty* to monitor fee agreements"⁵³ and noted that,

⁵⁰ See, e.g., *In re Surrick*, 338 F.3d 224, 230 (3d Cir. 2003) (noting that "individual district courts . . . have the power to prescribe requirements for admission to practice before that court and to discipline attorneys who appear before them") (brackets and citation omitted); see also *In re Goldstein*, 430 F.3d 106, 110 (2d Cir. 2005) ("A federal court possesses certain inherent powers to discipline attorneys who appear before it. These include[] the powers to police the conduct of attorneys as officers of the court and to impose sanctions for attorney misconduct. In exercising these inherent powers, courts have the right to inquire into fee arrangements . . . to protect the client from excessive fees.") (quotation marks and internal citations omitted).

⁵¹ The Third Circuit has premised this authority – even in diversity cases – on federal law, noting that because "the examination of a contingent fee arrangement's reasonableness . . . implicates our responsibility to supervise the members of our Bar" the Court "must apply federal law." *In re Finney*, 130 F. App'x 527, 531 n.5 (3d Cir. 2005) (citing *Dunn*, 602 F.2d at 1110 n.8; see also *Mitzel v. Westinghouse Elec. Corp.*, 72 F.3d 414, 417 (3d Cir. 1995) ("[C]ontingency fee agreements in diversity cases are to be treated as matters of procedure governed by federal law."); *Dunn*, 602 F.2d at 1110 & n.8 (concluding in class action case that district court had "authority to look beyond the face of the contingent fee agreements and could set them aside for want of a proper factual showing" and holding that the district court should apply federal law because "its action is part and parcel of the process a federal court follows both in supervising members of its bar and in meeting the obligations imposed on it by [Rule 23]") (citations omitted).

⁵² *Schlesinger v. Teitelbaum*, 475 F.2d 137, 141 (3d Cir. 1973).

⁵³ *McKenzie*, 758 F.2d at 100 (emphasis added); see also *Finney*, 130 F. App'x at 530 ("[A] District Court must be alert to a fee agreement that would unjustifiably enrich an attorney through oppression or overreaching.").

“[b]ecause courts have a special concern to supervise contingent attorney fee agreements, they are not to be enforced on the same basis as ordinary commercial contracts.”⁵⁴

18. The Third Circuit has also premised a court’s authority to ensure the reasonableness of contingent fees on a court’s equitable authority to protect “persons of presumed incapacity to look after their affairs intelligently.”⁵⁵ In this matter, that equitable authority would apply to much if not all of the class, given the players’ vulnerable physical and mental situations.⁵⁶ Indeed, some – perhaps many – IRPA contracts fall within the special province of Local Rule 41.2, which requires this Court’s explicit, individualized approval of any “counsel fee, costs or expenses . . . paid out of any fund obtained for a minor, incapacitated

⁵⁴ *McKenzie*, 758 F.2d at 101.

⁵⁵ *Schlesinger*, 475 F.2d at 139 & n.4 (holding that this power is “well recognized” and noting that “[t]he court acts in such cases under its equity jurisdiction over fiduciary relations”); *see also McKenzie*, 758 F.2d at 100 (“The defendant does not challenge the district court’s authority, whether based on its equitable jurisdiction or under its inherent power to regulate attorney-client relations, to determine the reasonableness of a fee resulting from the application of a contingent fee agreement.”).

⁵⁶ *See* ECF No. 8434 at 8 (stating, in filing by Co-Lead Counsel, that this Court is “well aware [that] many Class Members suffer from neurocognitive and neuromuscular impairments, including Alzheimer’s Disease, other forms of dementia, Parkinson’s Disease, and ALS; are in many cases of advanced age (having last played in the NFL decades ago); are in difficult financial straits; or are affected by some combination of these circumstances – factors that render them extremely vulnerable to manipulation by predatory lenders”); *see also* ECF No. 7346 at 8 (stating, in filing by law firm that represents “more than one hundred and fifty (150) Class Members,” that “[m]any Class Members suffer from mood disorders and emotional disability resulting from the brain trauma. This makes representing them more difficult, especially where those neurocognitive impairments have driven away family and friends who may have helped the attorney in communicating with the client or collecting information. Independent legal counsel must cope with clients who act erratically, can be unreliable and who have trouble with communicating with the attorney, providing information and keeping appointments.”).

person or such decedent's estate as a result of a compromise, settlement, dismissal or judgment.”⁵⁷

19. The class action nature of this case provides further context in support of the Court's employment of its inherent authority. In a class action, a court is necessarily involved in attorney-client relationships in a way that it is not in normal private litigation: *first*, it must approve lawyers to represent the absent class members;⁵⁸ *second*, acting as a fiduciary for the absent class members, it must approve any proposed settlement to ensure that the lawyers have not sold out the class's interests;⁵⁹ and *third*, again acting as a fiduciary for the absent class members, it must approve the lawyers' proposed fee to ensure against over-reaching.⁶⁰ The Court has a fiduciary duty to the absent class members not in the abstract but explicitly as to those class members' relationships with their lawyers. While that duty typically focuses on class counsel, in a case of this structure, it does not end there. IRPAs are each under this Court's direct supervision as they are representing members of a class that this Court certified and seeking a share of client recoveries coming from funds administered by this Court. The Court has already involved itself in class members' relationships to IRPAs by authorizing a notice that informed class members that they did not need their own attorneys.⁶¹ That notice may have confused class members who had already contracted with IRPAs about the residual meaning of

⁵⁷ Local Rule 41.2(c).

⁵⁸ Fed. R. Civ. P. 23(g).

⁵⁹ *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (“[T]he District Court evaluates the [proposed class action settlement] agreement as a fiduciary for absent class members.”).

⁶⁰ See note 48, *supra*.

⁶¹ ECF No. 6481-1 at 157.

those contracts. Class members contracting with IRPAs may also be unaware of the fact that Class Counsel is effectively seeking 15.6% of their recoveries, especially as the settlement is structured in a way that may obscure that fact. Although Class Counsel are the class members' champions, they themselves are IRPAs and they have not stepped forward to investigate and challenge whether any other IRPAs are charging unreasonable fees. In short, the Court cannot discharge its fiduciary duty to absent class members concerning their legal representation with blinders on, assessing Class Counsel's proposed 15.6% fee award while ignoring the fact that half of the class members are committed to paying the same, or other, lawyers yet another portion of their recoveries. The Court's unique relationship to class members in a class action is just the type of situation that authorizes use of its inherent authority over contingent fees.⁶²

20. The MDL nature of this action similarly argues in favor of the Court's employment of its inherent authority. The MDL statute directs this Court to "promote the just and efficient conduct of such actions."⁶³ Courts have held that in "the context of contingent fee arrangements, implementing a reasonable cap promotes justice for all parties by allowing claimants to benefit (as their attorneys have) from the economies of scale and increased efficiency that an MDL provides."⁶⁴

21. Myriad prior class action and non-class action MDL courts have concluded that a court's inherent authority over lawyers practicing before it enables the court to cap contingent

⁶² *Dunn*, 602 F.2d at 1109 ("Power flowing from this source has been exercised more frequently to protect those unable to bargain equally with their attorneys and who, as a result, are especially vulnerable to overreaching.").

⁶³ 28 U.S.C. § 1407(a).

⁶⁴ *In re Vioxx Prods. Liab. Litig.*, 650 F. Supp. 2d 549, 558 (E.D. La. 2009).

fee contracts.⁶⁵ Many have relied on other bases,⁶⁶ as well, but the Third Circuit law is so clear as to this Court's inherent authority that no more is necessary.⁶⁷

⁶⁵ See, e.g., *In re A.H. Robins Co., Inc.*, 86 F.3d 364, 373 (4th Cir. 1996) (“[T]he law of this circuit has long been clear that federal district courts have inherent power and an obligation to limit attorneys' fees to a reasonable amount. . . . In the present case, the district court, acting upon its extensive knowledge of this litigation . . . simply applied the settled principle that attorneys' fees must be reasonable. The court had this clear authority. This authority is so clear that it is not necessary to discuss the additional sources of such authority such as the federal court's power to enforce state law standards of ethical conduct and a federal district court's inherent power to regulate the conduct of the court's officers, including attorneys.”); *Evans v. TIN, Inc.*, No. CIV.A. 11-2182, 2013 WL 4501061, at *11–14 (E.D. La. Aug. 21, 2013) (agreeing with special master's analysis “regarding the Court's authority to limit the fees of privately retained attorneys” given the court's “obligation to protect the interests of the class in its role as a fiduciary and to ensure the reasonableness of attorney's fees”); *In re Rio Hair Naturalizer Prod. Liab. Litig.*, No. MDL 1055, 1996 WL 780512, at *20 (E.D. Mich. Dec. 20, 1996) (“It is well-settled that the court has the inherent authority to regulate contingency fees to ensure that they are not excessive or unreasonable.”); *In re Joint E. & S. Dists. Asbestos Litig.*, 878 F. Supp. 473, 558 (E.D.N.Y. & S.D.N.Y. 1995) (“Courts have wide discretion to approve, reject or limit fees earned by attorneys in prosecuting a class action. . . . The courts' fee-setting authority in a class action context, where a victory by the class typically creates a benefit that goes beyond those few individuals who actually prosecuted the class action, stems from the courts' equitable powers and the powers of the chancellor. . . . Courts reviewing fees pursuant to Rule 23, general equitable powers, or authority to control officers of the court, may override private, contractual fee agreements made by the attorneys representing the parties in the class action or related individual actions.”); *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 524–25 (D. Nev. 1987) (“The court has the right and the duty to establish equitable fees for all of the attorneys and has done so previously in this case.”).

⁶⁶ See, e.g., *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 290 F. Supp. 2d 840, 854–55 (N.D. Ohio 2003) (state ethics rules) (“In the absence of any real risk, an attorney's purportedly contingent fee which is grossly disproportionate to the amount of work required is a ‘clearly excessive fee’ within the meaning of [state rules of professional ethics]. This Court easily concludes that, by insisting on receipt of their full contingent fee, these attorneys are charging an unreasonable and clearly excessive fee.”) (internal citation and quotation marks omitted); *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1416 (D. Wyo. 1998) (settlement agreement) (“The [settlement] Agreement provides that ‘the Court shall reserve the power to set maximum limits on contingent fees, and . . . the Court may make appropriate reductions on such contingent fee amounts for the cost of ‘common benefit’ services provided by Class Counsel.”); *In re Joint E. & S. Dists. Asbestos Litig.*, 878 F. Supp. at 558 (Rule 23) (noting that Rule 23 creates “wide discretion [for courts] to approve, reject or limit fees earned by attorneys in prosecuting a class action”) (citing 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1803 (1986 & 1994 Supp.)).

22. In short, Third Circuit law unequivocally supports the proposition that this Court possesses the inherent authority to regulate the contingent fees of lawyers appearing before it and any lawyer representing a class member in this Settlement is clearly subject to this authority.

B. The 15% Cap

23. Given that the Court has the authority to cap contingent fee contracts, it must consider whether the circumstances require a cap and, if so, what the cap should be.

24. The Third Circuit’s four-part test governing judicial review of contingent fees provides guidance in addressing these questions. It states:

1. An attorney bears the burden of proof to demonstrate that his or her fee is reasonable, whether the action is initiated by the attorney or client.
2. The applicable standard in an attorney fee dispute is the reasonableness of the fee, applying principles of equity and fairness.
3. Consideration should be given to circumstances existing at the time the arrangement is entered into, and thereafter, to the quality of the work performed, the results obtained, and whether the attorney’s efforts substantially contributed to the result.
4. Although reasonableness at the time of contracting is relevant, consideration should also be given to whether events occurred after the fee arrangement was made which rendered a contract fair at the time unfair in its enforcement.⁶⁸

⁶⁷ The Court’s authority is so obvious that even those lawyers who resist the argument that their service as class counsel voids their individual fee contracts with the class representative nonetheless concede the Court’s authority to regulate those contracts. ECF No. 7085 at 12 (“The Court’s power to review the terms of a negotiated contingency fee contract arises from its supervisory authority. . . .That authority rests on the Court’s inherent powers. . . .”).

⁶⁸ *McKenzie Const., Inc. v. Maynard*, 823 F.2d 43, 45 (3d Cir. 1987) (summarizing holding of *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97 (3d Cir. 1985)); *see also Dunn*, 602 F.2d at 1113 (“We note that the class members are for all practical purposes unrepresented before the district court on the attorneys’ fee issue. In conducting its inquiry, the district judge may therefore properly place upon the class attorneys the burden of showing by a preponderance of the evidence that the contracts were entered into advisedly, and without overreaching, and that the fee awarded is reasonable under the circumstances.”).

Although courts “should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties . . . the district court must be alert to fees where the lawyer’s retention of it would be unjustified and would expose him to the reproach of oppression and overreaching.”⁶⁹

The Circumstances of This Case Support Application of a Cap

25. Seven circumstances about the current situation of this case create conditions in which IRPA contracts may encompass unreasonable fees.

26. *First*, class members with IRPAs are paying two sets of lawyers: Class Counsel and their IRPA.⁷⁰ As discussed above, Class Counsel is seeking 15.6% of the net present value of the settlement in fees and expenses and some contingent fee contracts are for 45%. Some players therefore face the possibility of paying nearly two-thirds of their recoveries to these two sets of lawyers.

27. *Second*, because this is a class action lawsuit, a class member’s fees should generally be lower than they would be if each player had needed to litigate separately. The aggregation of all of the class members’ claims into a single unit produces economies of scale. Many litigation tasks can be done once, not 20,000 times.⁷¹ Empirical evidence demonstrates

⁶⁹ *McKenzie*, 758 F.2d at 101 (internal quotation marks and citation omitted).

⁷⁰ As noted above, Class Counsel are also IRPAs, but they take the position that they are entitled to class fees and IRPA fees (*see, e.g.*, ECF Nos. 7071, 7073, 7075, 7085), so their clients, too, will essentially be paying two sets of lawyers.

⁷¹ *See In re Vioxx Prods. Liab. Litig.*, 650 F. Supp. 2d 549, 561 (E.D. La. 2009) (limiting individual attorneys’ fees because they “did not have to pursue individual discovery, nor did they have to file individual motions, engage in individual settlement negotiations, or prepare individual trial plans. Instead, many of the plaintiffs’ attorneys . . . were able to simply wait while a \$4.85 billion settlement was negotiated and then do no more than enroll their clients in

that in class action settlements of this size, class counsel's fees are generally about 13% of the class's recovery.⁷² In most such cases, class members do not need an IRPA and they do not pay a second attorney fee on top of the standard 13%. Absent careful judicial review of the two sets of fees in this case – where the Court has also deemed that class members do not need an IRPA⁷³ – some players might face legal bills more than four times the norm for a class action of this size.

28. *Third*, because this case entered a settlement phase very early – before discovery or trial – the quantity of litigation that has taken place does not support an extremely high legal fee. Both class action fee awards and contingent fee agreements tend to award counsel a greater percentage of the clients' recovery as the lawyers' investment in the litigation grows.⁷⁴ In this

the settlement and monitor their progress through the claims valuation process.”); *In re Zyprexa Prods. Liab. Litig.*, 424 F. Supp. 2d 488, 493 (E.D.N.Y. 2006) (noting that IRPAs “all benefitted from the effectiveness of coordinated discovery carried out in conjunction with the plaintiffs’ steering committee and from other economies of scale, suggesting a need for reconsideration of fee arrangements that may have been fair when the individual litigations were commenced”);

⁷² Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 839 tbl. 11 (2010) (reporting that mean fee for a \$500 million–\$1 billion settlement is 12.9%).

⁷³ ECF No. 6481-1 at 157 (“You do not have to hire your own attorney.”).

⁷⁴ Counsel’s fee should not depend *solely* on the quantity of litigation that took place: risk, results, and other factors are relevant; but both courts and the market for contingent fees recognize the role that counsel’s time investment plays in setting an appropriate fee. *See, e.g., In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009) (“In determining what constitutes a reasonable percentage fee award, a district court must consider the ten factors that we identified in *Gunter* and *Prudential*. They are: (1) the size of the fund created and the number of beneficiaries, (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel, (3) the skill and efficiency of the attorneys involved, (4) the complexity and duration of the litigation, (5) the risk of nonpayment, (6) the amount of time devoted to the case by plaintiffs’ counsel, (7) the awards in similar cases, (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.”) (citations omitted).

case, Class Counsel settled the entire case after briefing one dispositive motion, without undertaking any formal discovery, without significant motion practice, without summary judgment briefings, and without preparing for, much less engaging in, a class (or even one bellwether) trial;⁷⁵ no IRPA will need to undertake these tasks either. One of the firms designated as Class Counsel itself states that “[t]his is the only mega fund case in which there was no paper discovery, no depositions, no motion practice, no litigation, no trials, no trial activity.”⁷⁶ Given the relatively streamlined nature of the litigation, the clients’ total fee payments should be far less than, in some instances, 60+% of their recoveries.

29. *Fourth*, because Class Counsel have secured relief for the entire class, each IRPA’s work is significantly reduced: the IRPA’s primary task is to shepherd the client through the claims process to ensure relief for him. IRPAs should have invested time prior to undertaking representation in educating themselves on the nature of the facts and their clients’ possible claims in this matter; they must also now learn the details of this particular Settlement Agreement; they must monitor their clients’ situation over time (possibly decades); and they must master the process of ensuring a maximum payout to their clients. Nonetheless, IRPAs did not engage in formal discovery, motion practice, trial preparation, trial, or settlement negotiations.⁷⁷ IRPAs should be able to process their clients’ claims through the settlement

⁷⁵ This paragraph is not meant to criticize Class Counsel for settling without undertaking these litigation events but simply to observe the typical relationship between the quantity of the litigation that took place and the ultimate attorney’s fee.

⁷⁶ ECF No. 8709 at 30.

⁷⁷ IRPAs on the MDL leadership team would have been involved in the single litigated motion and aggregate settlement negotiations, but they are being compensated for that work through their aggregate fee, not their IRPA contract. *See* note 94, *infra*.

process without enormous time or expense expenditures.⁷⁸ This is especially true given that many players are represented by IRPAs with large inventories of clients:⁷⁹ the repeated nature of their work should drive down the costs of processing each player's claim.

30. *Fifth*, despite the large dollar figures of potential individual recoveries in this case, the actuarial data prepared by the parties reveal that the vast bulk of the class will receive no money from the MAF and the vast bulk of the players who do receive money will receive relatively small amounts. While about 20,000 class members have registered for the settlement, the actuarial studies estimate that the MAF will make payments to a total of 3,488 players and that 2,123 of those (61%) will be paid at or after the age of 80.⁸⁰ Most of those players (2,036) are expected to have Level 2 dementia, Alzheimer's, or Parkinson's and will likely receive \$50,000, as adjusted for inflation, while another set (77) are expected to suffer from Level 1 dementia and will likely receive \$25,000.⁸¹ Put more simply, about 61% of the players who will get paid are projected to receive \$25,000–\$50,000 (expressed in today's dollars) at some future

⁷⁸ The total amount of an IRPAs work will vary according to the complexity of a settlement's claiming process. *Compare, e.g., In re Sulzer Hip*, 290 F. Supp. 2d at 854 (warranting characterization that “filling out claims forms—is perfunctory in nature,” requiring little legal skill, particularly because “reports from the Claims Administrator . . . reveal that the percentage of claims found valid is equal for both represented and unrepresented plaintiffs,” and applying flat \$10,000 cap on claims processing work), *with In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No. MDL 05-1708 DWF/AJB, 2008 WL 3896006 (D. Minn. Aug. 21, 2008) (increasing IRPA fee cap because of unexpected complexities in claiming process).

⁷⁹ See note 33, *supra*.

⁸⁰ ECF No. 6168 at 42. These data are from the NFL's actuary. The plaintiffs' actuary estimates that about 100 more players (3,596) players will be compensated. ECF No. 6167 at 6.

⁸¹ ECF No. 6481-1 at 122. The \$25,000 for Level 1 dementia and \$50,000 for Level 2 dementia, Alzheimer's, and Parkinson's for players 80 years or older are floors for payments to this age group. *Id.* However, the parties' actuarial data supports the conclusion that most payments will be at or near this floor.

date⁸² – and each will be required to satisfy liens out of their recoveries as well.⁸³ These recoveries are so small that permitting counsel to take 60+% would be particularly troubling.

31. *Sixth*, as discussed above, the very nature of the case turns on the fact that many of the IRPAs’ clients “suffer from neurocognitive and neuromuscular impairments, including Alzheimer’s Disease, other forms of dementia, Parkinson’s Disease, and ALS; are in many cases of advanced age (having last played in the NFL decades ago); are in difficult financial straits; or are affected by some combination of these circumstances – factors that render them extremely vulnerable to manipulation.”⁸⁴ Class Counsel so characterized the class members in this case in arguing that this Court should protect them from “predatory lending practices.”⁸⁵ IRPAs are not predatory lenders, but the class members’ physical and mental vulnerabilities are nonetheless an important factor in considering the players’ capacity to negotiate reasonable contracts with IRPAs.

32. *Seventh*, the timing of the contingent fee contracts raises concerns that some may have been unreasonable at formation or become unreasonable given subsequent litigation events. Class members have contingent fee contracts dating back to at least 2011. Two key subsequent events divide this case into three phases for purposes of the reasonableness of contingent fees:

- *Phase 1 – Individual litigation.* Lawyers who contracted to represent players prior to the proposed consolidation of these actions into an MDL on November 15, 2011 faced the prospect of pursuing the entire case themselves, perhaps even through trial,

⁸² Class Counsel’s expert reaches similar conclusions. He predicts that 2,457 payments out of 5,899 (41%) will be made to players 80+ and that most will be for \$50,000 illnesses. ECF No. 6167-3 at 55.

⁸³ ECF No. 6481-1 at 64–68.

⁸⁴ ECF No. 8434 at 8.

⁸⁵ *Id.*

and fee arrangements reflecting those large contingencies would have been expected and appropriate. In my data base of lien filings, 3.3% of the retainer agreements for which the attorney reported the contract date were entered into in this phase of the case, with an average fee of 40%.

- *Phase 2 - MDL.* Arguably, from the time that the NFL made its motion to consolidate these cases into an MDL (November 15, 2011) – and certainly, from the time the motion was granted (January 31, 2012) – lawyers contracting to represent clients were well aware that the costs of doing so had been greatly reduced: pre-trial proceedings would now be consolidated and undertaken once and the likelihood that any case would be remanded for trial declined significantly.⁸⁶ In my data base of lien filings, 60.2% of the retainer agreements were entered into after the NFL’s MDL consolidation motion and before the parties announced their first proposed settlement, and, despite the streamlined nature of the action, the average contingent fee remained at about a third of a client’s recovery (32.1%).
- *Phase 3 – Class action settlement.* Once the leadership committee in the MDL proposed an aggregate class action settlement in August 2013,⁸⁷ and especially after the Court granted preliminary approval in July 2014, it became apparent that IRPAs would be primarily responsible only for processing their clients’ claims through the claims facility. In my data base of lien filings, 8.6% of the contingent fee contracts were entered into following announcement of settlement but before preliminary approval was finally granted (still with an average fee of 31%) and then a full 27.9% of the contingent fee contracts were entered into after the class action settlement had been preliminarily approved on July 7, 2014, with lawyers seeking an average fee of 25.9% for assisting their clients in the claims process.

The Third Circuit has referred to contingent fee contracts negotiated “after it became clear [a] suit would be reasonably successful” as a “sequence of events suggesting either overreaching by the attorney or the plaintiffs’ inability to grasp the implication of the contracts.”⁸⁸ In similar

⁸⁶ See *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 405 (D. Mass. 2008) (“Multi-district litigation is like the old Roach Motel ad: ‘Roaches [the transferred cases] check in—but they don’t check out.’”) (quoting Professor Samuel Issacharoff).

⁸⁷ See ECF No. 5235 (August 29, 2013) (reporting that the parties had reached a settlement structured as a class action).

⁸⁸ *Dunn*, 602 F.2d at 1112.

circumstances, at least one court has voided contingency fee contracts as lacking “contingency” and authorized payment only on an hourly rate basis.⁸⁹

33. In sum (1) players with IRPAs are paying two lawyers’ fees (2) in a case settled on an aggregate basis (3) following relatively little litigation (4) requiring IRPAs to undertake a modest amount of work (5) that will likely generate small recoveries for (6) vulnerable clients (7) who may be subject to contingent fees contracts that were either problematic at formation or are no longer reasonable. The totality of these circumstances strongly supports the Court’s inquiry into whether the percentages used in IRPAs’ contingent fee contracts are reasonable.

The Circumstances of This Case Support a Presumptive IRPA Fee Cap of 15%

34. Three measuring sticks assist in the task of ascertaining the proper level of IRPA fees: consideration of the relevant Third Circuit factors; data on contingent fee agreement levels in this case; and data from other cases.

35. *Third Circuit factors.* In considering the reasonableness of a contingent fee contract, the Third Circuit directs this Court to consider (a) “whether events occurred after the fee arrangement was made which rendered a contract fair at the time unfair in its enforcement,” with a focus on (b) “the quality of the work performed, the results obtained, and whether the attorney’s efforts substantially contributed to the result.”⁹⁰ As applied:

⁸⁹ *In re Sulzer Hip*, 290 F. Supp. 2d at 842 (holding that after *announcement* of settlement agreement, “it was no longer the case that an attorney representing a class member would receive compensation *contingent* upon successful performance” but permitting attorneys hired after that date “to assist a plaintiff with filling out claim forms . . . to compensation for his or her time, but only based on a reasonable hourly rate”) (emphasis in original).

⁹⁰ *McKenzie*, 823 F.2d at 45 (summarizing holding of *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97 (3d Cir. 1985)). The Third Circuit’s class action fee approval factors are set forth in footnote 74, *supra*. Some courts analyzing a fair IRPA fee apply these types of factors. *See*,

a. *Changed circumstances.* As set forth in ¶ 32 above, the contingent fee contracts in this case were entered into at times of varying degrees of contingency, risk, and work. That history supports two conclusions: (1) high contingent fee contracts entered into in phases 2 or phase 3 may have been unreasonable at formation; (2) but regardless, high contingent fee contracts are surely no longer reasonable. Each IRPA's workload has been so reduced that an initial 33–40% contingent fee for litigating and trying a case no longer fairly applies to assistance in the class action claims procedure. Thus, one of the two Co-Lead Counsel reports reducing its contingent fee rates as to two estates from 35% to 23% “to avoid an objection to their intentions;”⁹¹ another firm that serves as Class Counsel and simultaneously represents a large group of plaintiffs reported on its blog that it “decided long ago to reduce [its] fees from 33% to 20%;”⁹² yet another firm serving as Class Counsel and representing a large group of plaintiffs “voluntarily reduced the contingency fee percentage in the agreement to a maximum of 25%”⁹³ in at least one circumstance. These actions support the conclusion that contingent fee contracts for large percentages entered into earlier in this case's history are no longer reasonable under the case's present circumstances.

b. *Attorney's work, results, and contributions.* Moreover, regardless of the “quality” of an IRPA's work, his or her efforts generally did not “substantially contribute” to the

e.g., *Evans v. TIN, Inc.*, No. CIV.A. 11- 2182, 2013 WL 4501061, at *7–10 (E.D. La. Aug. 21, 2013). The discussion in the text covers all of the relevant factors from the Third Circuit's test.

⁹¹ ECF No. 7360 at 4.

⁹² *NFL Common Benefit Fees vs Individual Cases Fees*, Locks Law Firm Blog, <https://www.lockslaw.com/blog/2017/03/23/nfl-common-benefit-fees-vs-individual-case-fees> (stating “we decided long ago to reduce our fees from 33% to 20%”).

⁹³ ECF No. 7071 at 1 (reporting that one Class Counsel “voluntarily reduced the contingency fee percentage in the agreement to a maximum of 25%.”).

“the results obtained” given the aggregate resolution of the case.⁹⁴ It may be that if an IRPA provides “quality” representation in shepherding her client through the class action claims process, her client’s recovery will be more fulsome and hence she could argue that she “substantially contributed” to the “results obtained.” But since the claims’ values are pre-established and based on medical diagnoses, the most an IRPA can do is ensure her client receives his fair share. An IRPA should be able to serve her client to this level without need of 30–40% of that award.

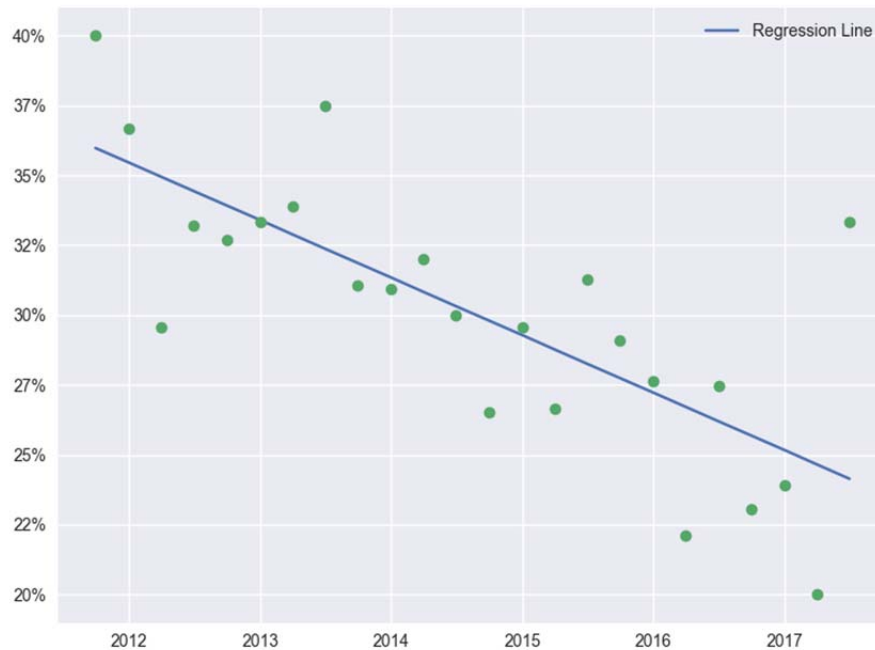
Thus, application of the Third Circuit’s reasonableness factors argues in favor of a substantially reduced contingent fee.

36. *Rates charged in this case.* The amount each player has contracted to pay his IRPA resides in a private contingent fee contract not publicly available. However, as noted above, because of the many lien filings (and other fee dispute filings) in this case, my research assistants and I were able to ascertain 617 bargained-for percentages from 640 IRPA contracts, or about 6% of all fee agreements. These data points provide insight on the rates that IRPAs are charging for representing clients in this settlement. The rates range from a low of 15% to a high of 40%, with a median of 30% and a mean of 29%. Moreover, the contracted-for rates have, not surprisingly, decreased over time: as just noted in the last paragraph, once the class action settled and the decreased nature of an IRPA’s risk and work became more apparent, some IRPAs

⁹⁴ Those IRPAs who served in leadership positions in the MDL may have substantially contributed to the results obtained, but they are being rewarded for that work through the class action fee. Their IRPA work – which they isolate as not covered by their class action fee petition, *see* ECF No. 7151-1 at 4 (“The requested award will be used to compensate the attorneys listed in this Petition only for common benefit work A number of law firms involved in this litigation were retained by individual Class Member clients. This petition does not include attorney time or expenses specific to their individual clients’ cases.”) – does not share this quality.

voluntarily lowered their contingent rates and some players (likely) switched IRPAs to garner lower rates.⁹⁵ Most recently, players have been contracting with IRPAs for payments between 20–25% of their recoveries, where earlier in the litigation rates were more typically between 35–40%. Graph 1, below, maps the changing market rate for IRPAs in this case over time.

GRAPH 1
Average Contingent Fee at Time of Contracting, By Quarter



While recent IRPA rates have come down to 20–25%, the actual market rate is likely as much as 5% lower. I reach that conclusion because IRPAs have been aware – since the second proposed Settlement Agreement was filed in this Court on July 7, 2014 – that Class Counsel would seek a common benefit fee constituting 5% of their clients’ recovery to be extracted from their

⁹⁵ ECF No. 8934 at 26–28 (discussing poaching among law firms).

contingent fee.⁹⁶ Any IRPA who has offered a contingent fee contract since July 7, 2014, has necessarily factored into the rate at which she is willing to work the possibility that she may have to share a portion of her fee equal to 5% of her client's recovery. Given the efficiency of the market for contingent fees documented above, the going rates of 20–25% are likely closer to 15%–20% because the market rate encompasses the information about this potential common benefit tax.

37. *Awards in other cases.* Courts in cases with similar settlement structures – *i.e.*, cases involving both central aggregate lawyers and IRPAs – have capped contingent fees in the past. In six such cases, courts set total fee caps (for both the aggregate lawyers and IRPAs) ranging from 20% to 37.18%, with an average of 32.25%; these six data points yielded effective IRPA fees ranging from 18% to 33.5%, with an average of 23.69%. In another set of seven cases, courts more directly capped IRPA rates, with those caps ranging from 5% to 33.33%, with an average of 17.95%. The average IRPA cap across all 13 cases is 20.6%. An eighth court simply awarded IRPAs a flat fee cap of \$10,000 for processing claims through the class action settlement.⁹⁷ These data are presented in Exhibit D.

38. The preceding points lead to my opinion that the Court should impose a presumptive 15% cap on the contingent fee amounts that IRPAs can charge clients in this class action claims process. If the Court were to award Class Counsel all \$112.5 million of its request,

⁹⁶ As discussed below, *see* Part III, *infra*, this 5% set-aside was not part of the initial Settlement Agreement in this class action.

⁹⁷ *In re Sulzer Hip*, 290 F. Supp. 2d at 854 (warranting characterization that “filling out claims forms—is perfunctory in nature” requiring little legal skill, particularly because “reports from the Claims Administrator . . . reveal that the percentage of claims found valid is equal for both represented and unrepresented plaintiffs” and applying flat \$10,000 cap on claims processing work).

represented class members would effectively be paying 15.6% of their recoveries in fees and expenses to Class Counsel. Accordingly, a 15% IRPA fee cap will mean that most represented players pay about 30.6% their recoveries to these two sets of lawyers, plus the IRPA's expenses – or roughly a third of their recovery. Given the quantity of litigation that occurred in this case and the size of the settlement, that is a sufficiently fair amount to ensure that counsel will continue to pursue these types of case. As discussed in the prior paragraphs, the 15% IRPA-specific cap also accords with the market rate in this case (assuming no 5% set-aside)⁹⁸ and is similarly consistent with IRPA rates in comparison cases.⁹⁹

39. Because 15% represents a reasonable percentage for the services the IRPAs are providing, if the Court should accept Class Counsel's proposal that each IRPA give 5% of her client's recovery to a common benefit fund for future legal work, the IRPA cap should be adjusted to take account of that extra payment. That said, the succeeding section of the report sets forth my expert opinion that there should be no 5% set-aside.¹⁰⁰

⁹⁸ The fact that IRPA rates have decreased as this case has proceeded does not undercut the necessity of a court-imposed cap. *First*, despite final approval of the class action settlement, the IRPA market rate remains between 20-25%; with the addition of Class Counsel's 15.6% fee request, most players still face total fees in the 40% range. *Second*, given the players' inherent physical and mental vulnerability, some (perhaps many) may not be able to shop effectively for better rates. *Third*, those players who do find better rates with different lawyers face the likelihood of a lien from their initial attorney, which could augment, rather than reduce, his ultimate fee.

⁹⁹ The 20.6% average in the other fee cap cases is higher than the 15% proposed here, but Class Counsel's proposed 15.6% fee here is a significant limiting factor; in these other settlements, the plaintiffs' steering committee generally was awarded less than 10% of the full recovery, enabling a slightly higher IRPA rate. *See also Newberg on Class Actions, supra* note 11, § 15:117 (reporting that in 29 cases with final common benefit assessments, the "mean award percentage was 7.32% and the median award percentage was 6%," less than half the 15.6% Class Counsel seek here).

¹⁰⁰ *See* Part III, *infra*.

40. In implementing the 15% cap, the Court should make the cap presumptive and establish a process whereby counsel or their client could seek relief from it in particular circumstances. For example:¹⁰¹

- Some IRPAs argue that they undertook significant amounts of important legal work on behalf of their individual clients prior to the creation of this MDL¹⁰² and/or accumulated so many clients¹⁰³ that they really laid the groundwork for this band of cases and this settlement. To the extent those arguments are factually accurate, those lawyers may be entitled to more than a 15% fee. That said, it also seems somewhat unfair to their clients that those clients should pay a greater amount of their recovery because their lawyers were so important to the whole case. Accordingly, if these lawyers are able to demonstrate the importance of their individual work for the common good – Co-Lead Counsel disputes the value of these contributions¹⁰⁴ – it would make more sense to compensate them from the common benefit fund than to tax their own clients for additional fees above the 15% cap.
- Some law firms in this case represent hundreds, or more than a thousand, individual players. These firms should be able to provide IRPA services at reduced contingent fee rates given the economies of scale.¹⁰⁵ Their clients – who likely get less individualized

¹⁰¹ This list is not meant to be exhaustive.

¹⁰² *See, e.g.*, ECF Nos. 8557 at 1 (describing research efforts that Goldberg, Persky & White began “more than a decade ago” and contending that the “legal strategies [the firm] developed became the basis for pursuing the claims” in the MDL); 8701 at 4-5 (describing Analpol Weiss filing of first federal action and work that went into filing).

¹⁰³ *See, e.g.*, ECF No. 8722 at 8 (“Firms, including Zimmerman Reed, undertook substantial risk when they filed the first cases, investing significant time and effort on behalf of both their individual clients and the Class as a whole The early concerted effort obtained a critical mass of plaintiffs . . . that legitimized the lawsuit . . . and paved the path towards the Settlement.”).

¹⁰⁴ ECF No. 8934 at 19 (“[W]hile being first to bring a lawsuit is important, it certainly does not support a large common benefit fee award when others performed virtually all of the post-filing work to bring about the Settlement, obtain final approval, and defend the Settlement through multiple appeals.”); *id.* at 25-26 (asserting absence of “objective proof that this purported critical mass is what drove the NFL to settle”).

¹⁰⁵ *Dunn*, 602 F.2d at 1113 n.12 (“The problem apparently encountered by the district court in this case is that a fee contract was entered into with 220 separate claimants, substantially increasing the total recovery and, correspondingly escalating the attorneys’ fees without a proportionate increase in the effort and expense of litigation. A fair and equitable contingent fee agreement generally provides for a sliding scale in which fees based on a percentage of the total

attention – should be able to realize those benefits through reduced contingent fee rates. Some of these firms appear to have voluntarily adjusted their rates accordingly, but if they do not, the Court should permit their clients to ask for a downward adjustment, even of the 15% cap, if appropriate.

- Similarly, clients who hired lawyers after the class action was proposed and/or settled should also be able to petition for lower rates given that their IRPAs shouldered almost no – or in the case of post-settlement approval IRPAs, no – risk.
- Finally, the class action fees and expenses (15.6%) plus the IRPA fee (15%) means most represented class members will pay 30.6% of their recoveries *and* their IRPA’s expenses. The IRPA expenses should not be significant, given the quantity of litigation at issue. Accordingly, if a class member is faced with IRPA expenses that push his aggregate fees over 33% of his recovery – that is, IRPA expenses exceeding about 2.5% of his recovery – he should have the opportunity to argue for a lower fee cap.

Third Circuit law puts the burden of proof on the lawyer to demonstrate by a preponderance of the evidence that the contingent fee is reasonable; thus in any proceeding challenging the cap’s application, the burden would be on the lawyer to justify the argued-for amount.

41. In sum, application of Third Circuit law supports the Court’s authority to implement a contingent fee cap and the circumstances of this case warrant a cap of 15%.

III. THE COURT SHOULD REJECT A 5% SET-ASIDE

42. Class Counsel seek a “set-aside” of 5% from each plaintiff’s recovery “for the purpose of reimbursing counsel for future common benefit work and expenses in conjunction with implementation of the Settlement.”¹⁰⁶ As noted at the outset, the proposal would set aside

recovery decrease as the amount of the recovery increases. The fee contracts in the instant case had no such formula and it may well be that an appropriate modification of the contracts could be a satisfactory solution to the conundrum posed here.”) (citations omitted).

¹⁰⁶ ECF No. 7151 at 2.

\$47.5 million in total over 65 years, the net present value of which is \$26.85 million.¹⁰⁷ For represented parties, the 5% would come out of their IRPA's contingent fee and not reduce their recovery; for unrepresented parties, the 5% would come out of their recovery and reduce it accordingly. The monies would be placed into a common benefit fund to be available to finance work by Class Counsel. But Class Counsel would have to petition the Court for approval of an award of fees from this common benefit fund. Thus, Class Counsel's present request is that the Court put in place a holdback assessment, leaving the possibility of actual fee awards from the assessment for the future.¹⁰⁸

43. Class Counsel's set-aside motion takes the position that the \$112.5 million class action fee award they seek pays them for *securing* the settlement, but that they will have to be paid extra for work *implementing* the settlement. Thus, Class Counsel define the "future" period to be funded by 5% set-aside funds as having commenced on the Effective Date of the Settlement (January 7, 2017)¹⁰⁹ or on the date of their filing a fee petition (February 13, 2017)¹¹⁰

¹⁰⁷ The mean calculation of the net present value of the \$950 million MAF is \$537 million. ECF No. 6168 at 51. Five percent of that amount is \$26.85 million.

¹⁰⁸ ECF No. 7464 at 18-19. *See also id.* at 19 ("As noted in the leading treatise on class actions, it 'is evident [that] a court makes two distinct calculations in assessing common benefit fees: *first*, a holdback assessment, and *second*, an award assessment.' Presently, Co-Lead Class Counsel request that the Court perform only the first calculation and order the holdbacks or set-asides.") (quoting *Newberg on Class Actions*, *supra* note 11, § 15:116 at 432).

¹⁰⁹ ECF No. 7151-1 at 71 ("[T]he holdback from a particular award will cover work done during the time period from the Effective Date of the Settlement to the player's award date.").

¹¹⁰ ECF No. 8447 at 14-15 ("As I explained in my earlier Supplemental Declaration in Support of the Fee Petition, work dedicated to the common benefit of the Settlement Class Members did not end *on the date that the Fee Petition was filed*. Indeed, after January 7, 2017, when the opportunity for any further appeals by objectors passed and the Settlement became Effective, the work increased substantially as registration launched, the Claims Process opened, and the BAP began.") (emphasis added). *See also id.* at 19 (submitting new lodestar time for common benefit work occurring subsequent to the filing of the fee petition).

and Co-Lead Counsel attributes nearly \$5 million of 2017 lodestar since that date as falling outside Class Counsel's \$112.5 million fee petition.¹¹¹

44. Class Counsel bear the burden of proving the need for a 5% set-aside,¹¹² but their artificial bifurcation of settlement and implementation – and hence the justification for the 5% set-aside – fails to meet that burden for at least six reasons.

45. *First*, the set-aside's history and genesis argue against its implementation. The set-aside did not appear in the initial Settlement Agreement that the parties proposed to the Court in 2013 and that the Court rejected in January 2014,¹¹³ although that settlement also had a 65-year arc. Only upon submission of the second Settlement Agreement in June 2014 did Class Counsel first suggest the need for \$47.5 million more in fees over 65 years.¹¹⁴ There is no explanation in the second settlement papers explaining *when* Class Counsel and the NFL discussed this 5% set-aside in negotiating the second Settlement Agreement¹¹⁵ and thus no explanation *why* Class Counsel would negotiate this term with the NFL, given that the NFL is

¹¹¹ ECF No. 8447-1 at 2 (as of October 10, 2017).

¹¹² *Potence v. Hazleton Area Sch. Dist.*, 357 F.3d 366, 374 (3d Cir. 2004) (holding, in fee-shifting case, that, "The party seeking attorneys' fees has the burden to prove that its request is reasonable.").

¹¹³ ECF No. 5634-2 at 74 (stating, in initial settlement, only \$112.5 million fee request).

¹¹⁴ ECF No. 6073-2 at 80–81. This same language is included in a subsequent version of the Settlement Agreement filed with the Court on February 13, 2015. ECF No. 6481-1 at 82. The redline version showing changes between the June 2014 settlement and February 2015 settlement confirms that this fee provision was not altered. See ECF No. 6481-2 at 83-84.

¹¹⁵ In fact, Co-Lead Counsel's Declaration in support of final approval of the second settlement describes the set-aside provision in the portion of his Declaration addressing the first settlement's fee negotiation, although the set-aside provision was not a part of the first settlement. See ECF No. 6423-3 at 28; *see also* ECF No. 6073-5 at 41–42 (addressing fees in preliminary approval brief without reference to genesis of this provision). By contrast, in their initial settlement papers, the parties explained that fees had not been discussed until the terms of the settlement had been established. ECF No. 5634-5 at 36.

not involved.¹¹⁶ Class Counsel nowhere contend that new terms in the second Settlement Agreement so enhanced their responsibilities over the 65-year life of the Settlement that the extra work warranted the need for an additional \$47.5 million over those years.¹¹⁷ What they did inform the Court was that the second Settlement Agreement likely did not augment the class's recovery: they state several times that the "Settling Parties remain confident in the projected value of the Fund at [its initial level],"¹¹⁸ and they continued to rely on the initial actuarial projections in defense even of the second Settlement Agreement. This history is troubling in that it implies that Class Counsel sought to significantly enhance their own fees without significantly enhancing their own work or, most importantly, their clients' recoveries.

46. *Second*, the text of the second Settlement Agreement's fee provision provides no support for the argument that the \$112.5 million fee award was only meant to fund counsel's work up to the effective date of the settlement. It states that, "After the Effective Date, Co-Lead

¹¹⁶ Scholars have argued that when counsel bargain for the inclusion of a term in an aggregate settlement agreement guaranteeing their common benefit fee they have "used their position to benefit themselves at the expense of those they were charged to represent" and that "[c]onduct of this sort establishes a predicate for fee forfeiture, not for fee enhancement." Silver and Miller, *Quasi-Class Action*, *supra* note 32, at 135.

¹¹⁷ The second agreement tightened the requirements for MAF payments to ensure against fraud, but not in a way that significantly enhanced Class Counsel's work, much less by close to \$50 million. *Compare, e.g.*, ECF 6073-2 at 61 with ECF No. 5634-2 at 55 (adding the phrase "in consultation with Co-Lead Class Counsel and Counsel to NFL Parties" to Claims Administrator's mandate to detect and prevent fraud).

¹¹⁸ ECF No. 6073-5 at 16 (stating, in preliminary approval papers, "[W]hile uncapped now, the Settling Parties remain confident in the projected value of this Fund at \$675 million . . ."); *see also id.* at 23 ("While the Settling Parties remain undeterred in their belief that the \$760 million deal originally struck would have been sufficient to compensate all Class Members with valid claims over the term of the Monetary Award Fund, the Settling Parties have now guaranteed payment of all valid claims without any concern that the Settling Parties' projections might have been inaccurate due to some unpredictable or unforeseen events."); ECF No. 6423-3 at 30 (declaring, in final approval papers, "[W]e still support and stand behind the reasonableness of our experts' earlier actuarial assumptions.").

Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel.”¹¹⁹ The “Effective Date” is referenced as a time after which Class Counsel could *petition* for this set-aside, not the time at which Class Counsel would start *billing* future work. The second Settlement Agreement also states that the NFL’s “obligation to pay class attorneys’ fees and reasonable costs is limited to those attorneys’ fees and reasonable costs ordered by the Court as a result of the initial petition by Class Counsel,” and that the NFL “shall not be responsible for the payment of any further attorneys’ fees and/or costs for the term of this Agreement.”¹²⁰ Again, however, that language does not limit the NFL’s obligation to pay fees for Class Counsel’s work up to the settlement’s effective date: it simply limits the time at which payment is made to the initial petition. Moreover, as set forth in the preceding paragraph, that language was added to the Settlement only after Class Counsel bargained for set-aside language in the second Agreement. If it newly limits the NFL’s obligations, that limitation should not be passed on to the class.

47. *Third*, class action law and practice provide no support for the argument that class counsel only do implementation work for extra money: countless cases state the class counsel’s fee pays for both settlement *and* implementation efforts.¹²¹ Not surprisingly, therefore, the cases

¹¹⁹ ECF No. 6481-1 at 82.

¹²⁰ ECF No. 6481-1 at 82.

¹²¹ *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (“A lodestar cross-check also supports the reasonableness of Class Counsel’s requested fees. Class Counsel expended 120,418 hours while litigating and settling claims on behalf of the 3.0-liter Class Members and *implementing the Settlement*. As of the filing of the instant fee application on June 30, 2017, Class Counsel also reserved an additional 9,676 hours to ‘(1) guide the nearly 90,000

Class Counsel rely on in support of this approach actually argue against it. Class Counsel's brief cites to other cases in which "common benefits funds" have been established, often at similar percentage levels.¹²² But in those cases, the relatively modest (5–6%) common benefit fund paid for *all* of the aggregate work that went into generating and implementing the *entire* settlement. Here, Class Counsel have separately petitioned the Court for a 15.6% class action fee and expense award to pay for their work in achieving the aggregate settlement. In response to objectors' arguments on these points, Class Counsel concede that "there really are no other cases in exact parallel" but that "[n]evertheless, it is helpful to highlight other cases wherein percentage set-asides in and around 5% were established."¹²³ This is unconvincing both because the 5% common benefit fees in those cases are comparable to the 15.6% class action fee Class Counsel seek *and* because these aggregate fee awards generally fund counsel's work securing and implementing aggregate settlements.

Class Members through the remaining 30 months of the Settlement Claims Period; (2) assist in the implementation and supervision of the Settlement, including by participating in the Claims Review Committee ...; and, if necessary, (3) take further action on behalf of class members with Generation Two vehicles in the event that [EPA] and [CARB] do not timely approve an Emissions Compliant Repair.”) (emphasis added); *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1008 (D. Colo. 2014) (“The Court finds that the amount of fees requested is reasonable considering the effort expended on this case by Class Counsel, including pre-suit investigation, informal class and merits discovery, retention of an expert to estimate damages, negotiation of the Settlement, and *implementation of the Settlement*.”) (emphasis added); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1038 (N.D. Ill. 2011) (“It bears emphasizing that an attorneys’ fee equal to 20% of the cash recovered in each Subfund will compensate a significant number of attorneys. Indeed, 92 lawyers are currently involved in *implementing the Settlement Agreement*, and the relevant award will be divided amongst each of them.”) (emphasis added); *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1285 (S.D. Ohio 1996) (granting attorney fees from the common fund in part for counsel’s “participation in the *implementation of the settlement*”) (emphasis added).

¹²² ECF No. 7151-1 at 71 n.38.

¹²³ ECF No. 7464 at 33 n.25.

48. *Fourth*, the \$112.5 million magnitude of Class Counsel’s aggregate fee request further undercuts the argument that it only funds work securing the settlement, but that counsel must be paid extra to implement it. Fee awards at this level tend to purchase a far greater quantity of legal services than simply securing a settlement agreement.¹²⁴ In the *Avandia* MDL in this District, for example, Judge Rufe awarded the plaintiffs’ steering committee a similar level fee (up to \$143 million) for:

- analyzing and cataloging more than 30 million pages of documents;
- taking or defending 220 depositions;
- finding, retaining, and working with more than 20 expert witnesses, from numerous fields of discipline;
- becoming educated on, and adept at addressing, complex medical and scientific issues;
- researching and defending against motions on a variety of legal issues, including without limitation, privilege, *Daubert*, *Lone Pine*, statute of limitations and tolling, and numerous discovery disputes, involving scope, extent, method, and applicability;
- preparing for and participating in monthly Status Conferences before the Court;
- preparing for and participating in more than 30 discovery hearings before the Special Master;
- negotiating with [the defendant] on issues leading to the Court's issuance of dozens of pretrial orders;
- drafting and lodging written discovery requests;
- preparing several bellwether cases for trial; and

¹²⁴ ECF No. 8709 at 30 (stating, in Declaration submitted by one of the Class Counsel, that “[t]his is the only mega fund case in which there was no paper discovery, no depositions, no motion practice, no litigation, no trials, no trial activity as in all previous mega funds in which settlement occurred after litigation work was accomplished”).

- negotiating settlement concepts that would provide a foundation for settlements across the litigation.¹²⁵

49. *Fifth*, if \$112.5 million is not a sufficient amount to fund Class Counsel's efforts both securing and implementing the Settlement, Class Counsel were – and remain – in the best position to secure more funding from the NFL. The Settlement Agreement that they negotiated states without qualification that “the NFL Parties shall pay class attorneys’ fees and reasonable costs.”¹²⁶ The rest of the provision simply provides that the NFL will not oppose an award of \$112.5 million and that it will only pay fees associated with an initial fee petition. If in negotiating the revised settlement agreement, Class Counsel came to the conclusion that an additional \$47.5 million in fees was necessary, they were in the best position to negotiate for that with the NFL. Having failed to do so, nothing in the Settlement Agreement bars Class Counsel from seeking that amount from the NFL now, other than the fact that they would have to convince this Court, over the NFL's objections, that they deserve that amount. If they are not confident they can make that showing, it hardly seems right to instead seek to extract the money from their own clients.

¹²⁵ *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, No. 07-MD-01871, 2012 WL 6923367, at *2 (E.D. Pa. Oct. 19, 2012); *see also Fanning v. Acromed Corp.*, 2000 WL 1622741, at *6 (E.D. Pa. Oct. 23, 2000) (approving 12% fee award in case in which: “The PLC has conducted substantial, widespread and extensive discovery of AcroMed and other defendants and third parties . . . (PLC reviewed more than 105,000 pages of documents produced by AcroMed and almost 1.5 million pages of documents produced by other defendants and third parties). The PLC has defended a variety of pleadings and discovery matters and litigated a plethora of motions, defeating AcroMed's preemption defense and other motions including those seeking dismissal on the grounds of First Amendment protection, Eleventh Amendment immunity, lack of jurisdiction, failure to state a claim, improper joinder and statute of limitations. As a result, the court has issued nearly 2000 Pretrial Orders.”) (internal quotation marks and citations omitted).

¹²⁶ ECF No. 6481-1 at 82.

50. *Sixth*, if there is a disjuncture between when Class Counsel seek to get paid and when they will have to finish the work embedded in that payment, the solution is not to pay them more money but to stagger their present payment to align with the work.¹²⁷ Thus, in one case the Court awarded Class Counsel its requested fee but set aside 10% of it in an interest-bearing account that was meant to “constitute a fund out of which class counsel will be compensated for time spent implementing the settlement,” noting that class counsel would “receive compensation from the fund on application to the Court as implementation of the settlement progresses.”¹²⁸

¹²⁷ See, e.g., *Mitchell v. Metro. Life Ins. Co.*, No. 01-CIV-2112 WHP, 2003 WL 25914312, at *1 (S.D.N.Y. Nov. 6, 2003) (approving class counsel’s \$3.4 million fee request and noting that “\$3.25 million will compensate Class Counsel for all fees and costs incurred through the final approval hearing and distribution of the class settlement fund [while] \$150,000 will compensate Class Counsel for future monitoring of MetLife’s compliance with the terms of the Consent Decree, which will be paid at the rate of \$50,000 per year over the three year term of the Decree”); *Haynes v. Shoney’s, Inc.*, No. 89-30093-RV, 1993 WL 19915, at *47 (N.D. Fla. Jan. 25, 1993) (approving \$25.5 million fee award, with \$20 million at settlement and \$5.5 million for post-approval work “monitoring, administration and implementation (including, without limitation, for processing of claims” to be paid “in one hundred twenty (120) monthly installments”).

¹²⁸ *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 126 (S.D.N.Y. 2001) (“The Settlement provides that attorneys’ fees are to be paid in a lump sum. The Court awards the plaintiff class counsel \$4,363,272.15, i.e., the requested \$4,848,080.17 less 10%. The remaining \$484,808.02 requested by plaintiff class counsel will be held in a separate interest bearing account and will constitute a fund out of which class counsel will be compensated for time spent implementing the settlement. Plaintiff class counsel will receive compensation from the fund on application to the Court as implementation of the settlement progresses.”) (citing *Rabin v. Concord Assets Group, Inc.*, 1991 WL 275757, *1 (S.D.N.Y. 1991) (“In view of the uncertainties surrounding the amount of time counsel will be called upon to devote in discharging their continuing monitoring obligations, the concept of deferring a final determination of the fee amount and setting aside a sum of money for eventual award to counsel or return to the class, commends itself to the Court.”); *Ramah Navajo Chapter v. Babbitt*, 50 F.Supp.2d 1091 (D.N.M. 1999) (“The Court will defer distribution of a portion of the second fees payment, if it deems such action to be necessary to guarantee completion of any remaining legal representation after distribution to the class is complete.”)).

Similarly, in the *Avandia* MDL, the Court awarded an additional \$10,050,000 – or .4% (not 4%) of the value of the settlement – to be “held in reserve for payment of future administrative fees and expenses.” *In re Avandia*, 2012 WL 6923367, at *1.

¹³¹ ECF No. 7464 at 36.

that review, Class Counsel’s primary future functions, once the settlement program is launched and functioning properly, will be threefold: to work with the claims administration staff in perpetuating a sound network of physicians; to monitor the claims process so as to ensure it is functioning well for the class (including audits, appeals, and funding); and to re-visit the science every ten years. Class Counsel should be able to accomplish these tasks at \$1 million/year.

53. If the Court were to adopt this approach, it should institute several measures designed to ensure against depletion of the future fund:

- *First*, the Court should include Class Counsel’s \$5 million 2017 lodestar – and perhaps more in 2018 lodestar – as part of its lodestar cross-check for the \$90 million present payment and not allocate this lodestar toward future work.¹³² All of this work is consistent with an initial payment in “launching” the settlement and not attributable to future work in “maintaining” a fully-launched program.
- *Second*, Class Counsel should be required to apply for fees from the set-aside fund on some regular – likely annual – basis.
- *Third*, if Class Counsel’s annual fee bill exceeds that \$1 million/year stream, Class Counsel should be permitted to carry-over monies to be paid against the subsequent year’s allocations. This is preferable to paying extra in any given year, as doing so depletes the capital in the account that is earning interest going forward. While work at the front end may be somewhat heavier, there should not be a high level of work each year for 65 years if the parties are able to establish a sound claims administration program.

¹³² I observe that the addition of \$5 million to Class Counsel’s \$40 million initial lodestar, ECF No. 7151-1 at 64, would bring their total lodestar to about \$45 million, meaning that a \$90 million fee award would embody a lodestar multiplier of 2, which is lower than the 2.6 that Class Counsel seek. *Id.* at 67. However, as noted below, *see* text accompanying note 136, *infra*, it is plausible that the Court will have to adjust counsel’s hourly rates downward, given that one of the two Co-Lead Counsel who submitted those rates for purposes of the lodestar cross-check, ECF No. 7151-1, now takes the position that the rates embody “gross disparities” unrelated to the lawyers’ “skill, efficiency, [and] quality of work” and that the Court should adopt uniform hourly rates. ECF No. 8701 at 14-15. Disciplined hourly rates would reduce Class Counsel’s aggregate \$45 million lodestar and thus enhance its lodestar multiplier over 2.

¹³⁸ *Avandia*, 2012 WL 6923367, at *9.

- *Sixth*, much of the future implementation work should not be done at high rates by the highest paid lawyers at a firm. The *Diet Drugs* litigation again provides a useful comparison point. The firm undertaking the work in that case is also Sub-Class Counsel in this case. In its lodestar submission for its work in this case, the partners bill at rates from \$975/hour to \$1,350/hour, with the average hourly rate for the firm coming in at \$1,201.26.¹⁴⁰ Simultaneously, in 2016, for implementation work in the *Diet Drugs* case, the same firm reported a lodestar of \$602,400 for 955.5 hours of work, with an average hourly rate of \$629.40.¹⁴¹ While this Court has yet to undertake the lodestar cross-check, and hence may or may not warrant rates at the \$1,201.26/hour level, the simple point is that monitoring work is not contingent,¹⁴² is often not highly challenging, and thus can be performed by associates at modest rates. Indeed, implementation should be capable of being performed at rates far below \$629.40/hour.

54. In sum, Class Counsel's aggregate fee request of \$112.5 million should cover both securing and implementing the settlement in the circumstances of this case. The long arc of the class's recoveries in this case means that Class Counsel's work implementing the Settlement will continue for decades. Given that Class Counsel seek a fee award for 100% of the class's

¹³⁹ *Id.* at *10 (reporting that counsel's total lodestar was \$55,279,440 for approximately 134,000 hours of work). Similarly, in the *Volkswagen Diesel* (3.0 Liter) case, I reported that the average, or blended, billing rate in 40 recent class action cases in the Northern District of California was \$528.11/hour, with the rate in that case coming in at \$461.69. See Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for 3.0 Liter Attorney's Fees and Costs, ECF No. 3396-2, Ex. B at 19, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (June 30, 2017).

Some, though not all, of the nearly \$800/hour average hourly rate in this case is attributable to the fact that there was no discovery, which is usually undertaken by associates and staff attorneys at lower rates; the total lodestar here therefore primarily encompasses the time of leadership committee lawyers charging senior partner rates for their involvement in settlement negotiations.

¹⁴⁰ ECF No. 7151-6 at 11 (reporting \$6,031,806.25 in total fees for 5,021.25 hours of work).

¹⁴¹ *In re Diet Drugs*, 2017 WL 2838257. Similarly, in 2015, the firm performed 2,610 hours of work for a lodestar of \$1,502,075, yielding an hourly rate of \$575.51. *In re Diet Drugs Prod. Liab. Litig.*, No. 99-20593, 2016 WL 8732314, at *1 (E.D. Pa. May 6, 2016).

¹⁴² *In re Diet Drugs*, 2017 WL 2838257, at *5 ("Levin concedes that the risk of non-payment for work performed in connection with the administration of the Class Settlement in the period after December 31, 2009 is minimal.").

recovery now, even though many class members will not get paid for decades, some portion of that fee award should be set aside and paid out over time, to correspond with the implementation work that Class Counsel will have to do over time. This approach aligns Class Counsel's fees with the class recoveries in a straightforward manner without requiring *extra* pay for Class Counsel to do work that is an expected part of its underlying class action fee award. Given these factual and legal points, Class Counsel cannot meet their burden of demonstrating that, having sought a 15.6% class action fee and expense award, they are also entitled to an additional 5% of all future recoveries.

55. Implicit in my opinion is the sense that if Class Counsel received a 5% set-aside on top of its \$112.5 million fee request, they would be getting paid twice for the same work. Given my recommendation that the 5% set-aside be rejected, there is no need for me to separately address the "double-dipping" concern the Court identified with regard to this 5% assignment.¹⁴³

¹⁴³ I note for the record that there is a different double-dipping concern raised by the dispute between the Estate of Kevin Turner, ECF Nos. 7029, 7114, and the law firm Podhurst Orseck, P.A., ECF No. 7071, now joined by many other firms on the leadership committee, ECF Nos. 7073, 7075, 7085. That dispute concerns whether Class Counsel who have secured fees for their aggregate work in a class action lawsuit may separately, and additionally, enforce a contingent fee contract against the class representative for work securing his individual relief. My opinion regarding the facts and circumstances of Class Counsel's 5% set-aside motion is not meant to address the Turner fee dispute in any way. It is not my understanding of the Court's Order directing my work that I do so. *See* ECF No. 8376 at 2.

* * *

56. I have stated my expert opinions that:

- Third Circuit law clearly invests this Court with the inherent authority to cap the contingent fee contracts of the lawyers appearing before it, which includes any lawyer seeking a share of his or her client's recovery through the current class action settlement process. The Court should cap IRPA contingent fee contracts at 15% because at least seven circumstances about this case support the conclusion that contingent fees contracts risk generating unreasonable fees. Such a cap would mean that no player would pay more than about a third of his recoveries in fees and expenses, given that Class Counsel's fee request of \$112.5 million constitutes 15.6% of the net present value of the settlement.
- The Court should reject Class Counsel's request for a 5% set-aside and should instead bifurcate its aggregate fee award into a present payment and a fund for future payments, and it should adopt measures to ensure that the fund remains viable over the 65-year duration of the settlement.



William B. Rubenstein

December 3, 2017
Los Angeles, California

EXHIBIT A

In re National Football League Players' Concussion Injury Litigation

MDL No. 2323

Expert Declaration of William B. Rubenstein

EXHIBIT A

Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

I. Case Filings

A. Case No. 2:12-md-02323

1. Transfer Order to Eastern District of Pennsylvania, ECF No. 1
2. Case Management Order No. 1, Practice and Procedure Order Upon Transfer Pursuant to 28 U.S.C. § 1407(a), ECF No. 4
3. Interested Party Response in Support of Defendant National Football League's Motion for Transfer and Coordination or Consolidation, ECF No. 5
4. The National Football League's Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed. R. Civ. P. 12(b) and 12(b)(6), ECF No. 17
5. Memorandum of Law in Support of The National Football League's Motion to Dismiss the Amended Complaint, ECF No. 17-1
6. Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted (FRCP 12(B)(6)); Memorandum of Points and Authorities, ECF No. 18
7. Notice of Motion and Motion to Dismiss for Failure to State a Claim upon Which Relief can be Granted (FRCP 12(B)(6)); Memorandum of Points and Authorities, ECF No. 20
8. Notice of Motion and Motion to Dismiss for Failure to State a Claim upon Which Relief can be Granted (FRCP 12(B)(6)); Memorandum of Points and Authorities, ECF No. 22
9. Memorandum in Support of Plaintiff's Request to Conduct Pretrial Discovery, ECF No. 40
10. Order, ECF No. 52
11. The National Football League's Memorandum of Law in Opposition to Plaintiff's Motion to Conduct Pretrial Discovery, ECF No. 53
12. Plaintiffs' Joint Application for Appointment of Plaintiffs' Executive Committee, Plaintiffs' Steering Committee, and Plaintiffs' Liaison Counsel, ECF No. 54
13. Plaintiffs' Executive Committee Resumes & References, ECF No. 54-1
14. Plaintiff's Steering Committee Resumes & References, ECF No. 54-2
15. Plaintiff's Liaison Counsel Resume & References, ECF No. 54-3
16. Proposed Order, ECF No. 54-4
17. Certificate of Service, ECF No. 54-5
18. Plaintiffs' Joint Application for Appointment of Plaintiffs' Executive Committee, Plaintiffs' Steering Committee, and Plaintiffs' Liaison Counsel, ECF No. 54-main
19. Case Management Order No. 2, ECF No. 64
20. Order, ECF No. 66
21. Case Management Order No. 3, ECF No. 72
22. Plaintiff's Master Administrative Long-Form Complaint, ECF No. 83

23. Plaintiffs' Master Administrative Class Action Complaint for Medical Monitoring and Original Class Action Complaint for Plaintiff's Allen, Kowalewski, Little, Wooden & Fellows, ECF No. 84
24. Order, ECF No. 85
25. Case Management Order No.4, ECF No. 98
26. Plaintiff's Motion to Remand and Motion for Discovery in Aid of Remand, ECF No. 100
27. Memorandum of Plaintiffs in Support of Motion to Remand and for Discover in Aid of Remand, ECF No. 100-3
28. Short Form Complaint, ECF No. 1850
29. Plaintiffs' Amended Master Administrative Long-Form Complaint, ECF No. 2642
30. Order, ECF No. 3384
31. Defendants National Football Leagues and NFL Properties LLC's Motion to Dismiss the Amended Master Administrative Long-Form Complaint on Preemption Grounds, ECF No. 3589
32. Memorandum of Law of Defendants National Football League and NFL Properties LLC in Support of Motion to Dismiss the Amended Master Administrative Long-Form Complaint on Preemption Grounds, ECF No. 3589-1
33. Defendants National Football leagues and NFL Properties LLC's Motion to Dismiss the Master Administrative Class Action on Preemption Grounds, ECF No. 3590
34. Memorandum of Law of Defendants National Football League and NFL Properties LLC in Support of Motion to Dismiss the Master Administrative Class Action Complaint on Preemption Grounds, ECF No. 3590-1
35. Plaintiff's Uncontested Motion for Order Establishing a Time and Expense Reporting Protocol and Appointing Auditor, ECF No. 3698
36. Pretrial Order No. 9, ECF No. 3698-1
37. Memorandum and Order, ECF No. 3698-2
38. Pretrial Order No. 6, ECF No. 3698-3
39. Curriculum Vitae or Alan B. Winikur, CPA/ABV/CFF, ECF No. 3698-4
40. Pretrial Order No. 109, ECF No. 3698-5
41. [Proposed] Case Management Order No. 5 Re: Submission of Plaintiff's Time and Expense Reports and Appointment of Auditor, ECF No. 3698-6
42. Time Report Template, ECF No. 3698-7
43. Certificate of Service, ECF No. 3698-8
44. Case Management Order No. 5 Re: Submission of Plaintiffs' Time and Expense Reports and Appointment of Auditor, ECF No. 3710
45. Memorandum of Plaintiffs in Opposition to Defendants National Football League's and NFL Properties LLC's Master Administrative Long-Form Complaint, ECF No. 4130
46. Memorandum of Plaintiffs' in Opposition to Defendants National Football League's and NFL Properties LLC's Motion to Dismiss Plaintiffs' Master Administrative Class Action Complaint for Medical Monitoring, ECF No. 4131
47. Memorandum of Certain Plaintiffs' in Opposition to Defendants National Football League's and NFL Properties LLC's Motion to Dismiss Concerning Additional Cause of Action Pled in Short Form Complaints, ECF No. 4132

48. Reply Memorandum of Law of Defendants National Football League and NFL Properties LLC in Further Support of Motion to Dismiss the Amended Master Administrative Long-form Complaint on Preemption Grounds, ECF No. 4252
49. Reply Memorandum of Law of Defendants National Football League and NFL Properties LLC in Further Support of Motion to Dismiss the Master Administrative Class Action Complaint on Preemption Grounds, ECF No. 4253
50. Reply Memorandum of Law of Defendants National Football League and NFL Properties LLC in Further Support of Motion to Dismiss Additional Causes of Action Pled in Certain Short-Form Complaints, ECF No. 4254
51. Surreply of Plaintiffs in Response to Defendants National Football League's and NFL Properties LLC's Reply Memorandum of Law in Further Support of Motion to Dismiss the Amended Master Administrative Long-Form Complaint, ECF No. 4589
52. Surreply of Plaintiffs in Response to Defendants National Football League's and NFL Properties LLC's Reply Memorandum of Law in Further Support of Motion to Dismiss the Amended Master Administrative Class Action Complaint, ECF No. 4591
53. Notice, ECF No. 4596
54. Order, ECF No. 5128
55. Order, ECF No. 5235
56. Order Appointing Special Master, ECF No. 5607
57. Motion of Proposed Co-Lead Class counsel, Class Counsel, and Subclass Counsel for an Order: (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel, and Subclass Counsel.; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Claims as to The NFL Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, ECF No. 5634
58. [Proposed] Order (1) Granting Preliminary Approval of The Proposed Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Claims as to the NFL Parties and Enjoining Proposed Settlement Class Members from Pursing Related Lawsuits, ECF No. 5634-1
59. Class Action Settlement Agreement, ECF No. 5634-2
60. Declaration of Katherine Kinsella, ECF No. 5634-3
61. Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Preliminary Approval of Settlement, ECF No. 5634-4
62. Memorandum of Law in Support of Motion of Proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel for an Order: (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Claims as to the NFL Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, ECF No. 5634-5
63. Memorandum, ECF No. 5657
64. Order, ECF No. 5658

65. Motion of Proposed Class Counsel for an Order: (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Matters as to the Released Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, ECF No. 6073
66. [Proposed] Order (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Matters as to the Released Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, ECF No. 6073-1
67. Class Action Settlement Agreement as of June 25, 2014, ECF No. 6073-2
68. Declaration of Katherine Kinsella, ECF No. 6073-3
69. Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Preliminary Approval of Settlement, ECF No. 6073-4
70. Memorandum of Law in Support of Motion of Proposed Class Counsel for an Order: (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Matters as to the Released Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, ECF No. 6073-5
71. Objection to June 25, 2014 Class Action Settlement and Opposition to Motion for Preliminary Approval of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine, ECF No. 6082
72. Memorandum, ECF No. 6083
73. Order, ECF No. 6084
74. Class Action Settlement Agreement as of June 25, 2014, ECF No. 6087
75. Notice of Appeal, ECF No. 6121
76. Response of the National Football League and NFL Properties LLC to Motion of Twenty-Four Plaintiffs to Gain Access to Medial, Actuarial, and Economic Information Used to Support the Settlement Proposal [Doc. #6115], ECF No. 6143
77. Co-Lead Class Counsel's Response to Bloomberg L.P. and ESPN, Inc's Amended Motion to Intervene to Seek Access to Documents and Information and Response to Bloomberg L.P. And ESPN, Inc.'s Amended Motion for Access to Documents and Information, ECF No. 6144
78. Order, ECF No. 6160
79. United States Court of Appeals for the Third Circuit, ECF No. 6166
80. NFL Concussion Liability Forecast, ECF No. 6167
81. NFL Concussion Liability Forecast, ECF No. 6167
82. Supplemental Schedules Provided at the Request of the Special Master, ECF No. 6167-1
83. Counts and Compensation, by Year Paid and by Disease, ECF No. 6167-2
84. Counts and Compensation, by Age and by Disease, ECF No. 6167-3
85. Counts and Compensation (continued), ECF No. 6167-4

86. Report of the Segal Group to Special Master Perry Golkin, ECF No. 6168
87. Report of the Segal Group to Special Master Perry Golkin, ECF No. 6168
88. Player Database, ECF No. 6168-1
89. Actuarial data, ECF No. 6168-2
90. Plaintiff's Sample Data, ECF No. 6168-3
91. Screenshot of Plaintiff's Database, ECF No. 6168-4
92. Screenshot of Model Assumptions as Entered into Model, ECF No. 6168-5
93. Cash Flow Analysis, ECF No. 6168-6
94. Supplemental Schedules provided at the Request of the Special Master, ECF No. 6168-7
95. Notice of Motion of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine for Leave to Conduct Limited Discovery, ECF No. 6169
96. Memorandum of Law in Support of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine's Motion for Leave to Conduct Limited Discovery, ECF No. 6169-1
97. Co-Lead Class Counsel's Memorandum of Law in Response to Motion of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeffrey Rohrer, and Sean Considine for Leave to Conduct Limited Discovery, ECF No. 6183
98. Response of the National Football League and NFL Properties LLC in Opposition to Motion for Leave to Conduct Limited Discovery (DOC. No. 6169) , ECF No. 6185
99. Objections of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick "ROCK" Cartwright, Jeff Rohrer, and Sean Considine to Class Action Settlement, ECF No. 6201
100. Objections by Susan Owens, Widow of Deceased NFL Player R.C. Owens, to Proposed Settlement, ECF No. 6210
101. Objection to Settlement, ECF No. 6213
102. Motion of Public Citizen, Inc. For Leave to File Memorandum as Amicus Curiae with Respect to Approval of Class Action Settlement, ECF No. 6214
103. Motion of Public Citizen, Inc. For Leave to File Memorandum as Amicus Curiae with Respect to Motion for Approval of Class Action Settlement, ECF No. 6214-1
104. Objection by John Kinard, Representative Claimant of Decent Frank M. "Bruiser" Kinard, On Behalf of Himself and Others Similarly Situated, ECF No. 6219
105. Objection by Return NFL Player Steven Collier to Proposed Class Settlement, ECF No. 6220
106. Objection by Estate of Retired NFL Player Delano Roper Williams to Proposed Class Settlement, ECF No. 6221
107. Objection by Estate of Retired NFL Player William "Jeff" Komlo to Proposed Class Settlement, ECF No. 6222
108. Objection by Retired NFL Player Reginald Slack and Matthew Rice to Proposed Class Settlement, ECF No. 6223
109. Objection by Michael Barber, Myron Bell, Jeff Blake, Larry Bowie, Ben T. Coates, Daunte Culpepper, Eric Curry, Edgerton Hartwell II, Johnny MC Williams, Adrian Murrell, Marques Murrell, Derek Ross, Benjamin Rudolph, Anthony Smith, Fernando Smith, Anthony ("Tony") Smith and Jonathan Wells, on Behalf of Themselves and Others Similarly Situated to Proposed Settlement, ECF No. 6226

110. Objection of Craig Heimburger and Dawn Heimburger, ECF No. 6230
111. Supplement to October 6, 2014 Objection of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine, ECF No. 6232
112. Amended Objection to the June 25, 2014 Class Action Settlement Agreement by Ramon Armstrong, Nathaniel Newton, Jr., Larry Brown, Kenneth Davis, Michael McGruder, Clifton L. Odum, George Teague, Drew Coleman, Dennis DeVaughn, Alvin Harper, Ernest Jones, Michael Kiselak, Jeremy Loyd, Gary Wayne Lewis, Lorenzo Lynch, Hurles Scales, Gregory Evans, David Mims, Evan Oglesby, Phillip E. Epps, Charles L. Haley, Sr., Kevin Rey Smith, Darryl Gerard Lewis, Curtis Bernard Wilson, Kelvin Mac Edwards, Sr., Dwayne Levels, Solomon Page, and Tim Mckyer, ECF No. 6233
113. Objection of Preston Jones and Katherine Jones to Class Action Settlement, ECF No. 6235
114. Objections to June 25, 2014 Class Action Settlement Agreement, ECF No. 6237
115. Estate of David Duerson, Estate of Forrest Blue, Thomas Deleone, Gerald Sullivan, Barry Darrow, Ray Austin, Bruce Herron, John Cornell, Tori Noel and Mike Adamle's Objections to Class Action Settlement, ECF No. 6241
116. Objections of Sixteen Plaintiffs to Approval of Settlement, ECF No. 6242
117. Objections to the Class Action Settlement Agreement dated June 25, 2014, ECF No. 6243
118. Order, ECF No. 6245
119. Curtis L. Anderson Objections to Settlement, ECF No. 6248
120. Opt Out Report Submitted by the Claims Administrator, ECF No. 6340
121. NFL Concussion Settlement Exhibit 1, ECF No. 6340-1
122. NFL Concussion Settlement Exhibit 2, ECF No. 6340-2
123. Supplement to October 6, 2014, Objection of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine, ECF No. 6420
124. National Football League's ang NFL Properties LLC's Memorandum of Law in Support of Final Approval of the Class Action Settlement Agreement and in Response to Objections, ECF No. 6422
125. Declaration of Douglas M. Burns, ECF No. 6422-1
126. NFL Concussion Settlement Exhibit 1, ECF No. 6422-2
127. Former NFL Players Face Deadline to Opt Out of Concussion Settlement, ECF No. 6422-3
128. Revised NFL Concussion Settlement gets U.S. Judge's Preliminary Ok, ECF No. 6422-4
129. Revised NFL Concussion Settlement gets U.S. Judge's Preliminary Ok, ECF No. 6422-5
130. NFL Agrees to Settle Concussion Suit for \$765 Million, ECF No. 6422-6
131. Prevalence and Characterization of Mild Cognitive Impairment in Retired National Football League Players, ECF No. 6422-7
132. Consensus Statement on Concussion in Sport: the 4th international conference on Concussion in Sport held in Zurich, November 2012, ECF No. 6422-8
133. Report on the Neuropathology of Chronic Traumatic Encephalopathy Workshop December 5-6, 2012, National Institutes of Health, Bethesda, Maryland, Sports and health Research Program, ECF No. 6422-9

134. Sports-Related Concussions in Youth, Improving the Science, Changing the Culture, ECF No. 6422-10
135. Hoge Wins Lawsuit Against Doctor, ECF No. 6422-11
136. The Spectrum of Disease in Chronic Traumatic Encephalopathy, ECF No. 6422-12
137. Chronic Traumatic Encephalopathy and Risk of Suicide in Former Athletes, ECF No. 6422-13
138. Racing to Detect Brain Trauma, ECF No. 6422-14
139. Chronic Traumatic Encephalopathy: Where Are We and Where Are We Going?, ECF No. 6422-15
140. Chronic Traumatic Encephalopathy in Sport: A Systematic Review, ECF No. 6422-16
141. Head Injury is not a Risk Factor for Multiple Sclerosis: A Prospective Cohort Study, ECF No. 6422-17
142. Risk of Multiple Sclerosis After Head Injury: Record Linkage Study, ECF No. 6422-18
143. A Population-Based Study of Seizures After Traumatic Brain Injuries, ECF No. 6422-19
144. Pre-Existing Hypertension and the Impact of Stroke on Cognitive Function, ECF No. 6422-20
145. Dementia, Stroke, and Vascular Risk Factors; a Review, ECF No. 6422-21
146. Patients with Traumatic Brain Injury Population-Based Study Suggests Increased Risk of Stroke, ECF No. 6422-22
147. Stroke Risk and Outcomes in Patients with Traumatic Brain Injury: 2 Nationwide Studies, ECF No. 6422-23
148. The Association Between Head Trauma and Alzheimer's Disease, ECF No. 6422-24
149. The Association Between Head Trauma and Alzheimer's Disease, ECF No. 6422-25
150. Increased Risk of Dementia in Patients with Mild Traumatic Brain Injury: A Nationwide Cohort Study, ECF No. 6422-26
151. Head Injuries and Parkinson's Disease in a Case-Control Study, ECF No. 6422-27
152. Chronic Traumatic Encephalopathy: A Potential Late Effect of Sport-Related Concussive and Subconcussive Head Trauma, ECF No. 6422-28
153. Q&A: Robert Stern sheds light on Bu brain study – USAToday.com, ECF No. 6422-29
154. Dent, et al. V. NFL., No. C 14-02324 WHA (N.D. Cal.), ECF No. 6422-30
155. ESPN Extends Deal with NFL for \$15 Billion, ECF No. 6422-31
156. Declaration of Dennis L. Curran, ECF No. 6422-32
157. Declaration of T. David Gardi, ECF No. 6422-33
158. Declaration of Scott Richard Millis, PHD, ECF No. 6422-34
159. Declaration of Julie Ann Schneider, M.D., ECF No. 6422-35
160. Declaration of Kristine Yaffee., M.D., ECF No. 6422-36
161. Class Plaintiff's Motion for an Order Granting Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423
162. Memorandum of Law in Support of Class Plaintiff's Motion for an Order Granting Final Approval of Settlement and certification of Class and Subclasses, ECF No. 6423-1
163. Compendium of Exhibits for Memorandum of Law in Support of Motion of Co-Lead Class Counsel for an Order Granting Final Approval of Settlement and certification of Class and Subclasses, ECF No. 6423-2
164. Declaration of Co-Lead Class Counsel Christopher A. Seeger in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-3

165. Affidavit of Matthew L. Garretson, ECF No. 6423-4
166. Declaration of Orran L. Brown, Sr., ECF No. 6423-5
167. Supplemental Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-6
168. Affidavit of Kevin Turner in Support of final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-7
169. Affidavit of Shawn Wooden in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-8
170. Declaration of Robert H. Klonoff Relating to The Proposed Class Settlement in the National Football League Players' Concussion Injury Litigation, ECF No. 6423-9
171. Declaration of Subclass 1 Counsel Arnold Levin in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-10
172. Declaration of Subclass 2 Counsel Dianne M. Nast in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 6423-11
173. Declaration of Katherine Kinsella, ECF No. 6423-12
174. Declaration of Edward J. Radectich, Jr., ECF No. 6423-13
175. Objections, ECF No. 6423-14
176. Proposed NFL Settlement is Good for Players, ECF No. 6423-15
177. Protecting the Past, The Present, and The Future, ECF No. 6423-16
178. Declaration of Kenneth C. Fischer, M.D, ECF No. 6423-17
179. Declaration of Christopher C. Giza, M.D., ECF No. 6423-18
180. Declaration of David Allen Hovda, PhD., ECF No. 6423-19
181. Declaration of John G. Keilp, PhD., ECF No. 6423-20
182. Declaration of Thomas Vasquez PhD., ECF No. 6423-21
183. Imprelis Class Action Settlement, ECF No. 6423-22
184. Deepwater Horizon Court-Supervised Settlement Program, ECF No. 6423-23
185. AHP Diet Drug Settlement Administered by the AHP Settlement Trust, ECF No. 6423-24
186. Declaration of Richard Allen Hamilton, PhD, ECF No. 6423-25
187. [Proposed] Final Order and Judgement, ECF No. 6423-26
188. Amicus Curiae Objection of Dawn Astle and Claire Astle to Class Action Settlement, ECF No. 6439
189. Response of Sixteen Objectors to the Motions for Settlement Approval Filed by The NFL and Class Plaintiffs, ECF No. 6453
190. Final Supplement to Utecht Objections, ECF No. 6454
191. Post-Fairness Hearing Supplemental Briefing of Objectors Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine, ECF No. 6455
192. Estate of David Duerson, Estate of Forrest Blue, Thomas Deleone, Gerald Sullivan, Barry Darrow, Ray Austin, Bruce Herron, John Cornell, Tori Noel and Mike Adamle's Supplemental Brief in Support of Their Objections to Class Action Settlement, ECF No. 6456
193. National Football League's and NFL Properties LLC's Reply Memorandum of Law in Further Support of Final Approval of the Class Action Settlement Agreement and in Response to Objections, ECF No. 6466

194. Co-Lead Class Counsel's Reply Brief in Further Support of Motion for an Order Granting Final Approval of Settlement and Certification of Class and Subclasses and Omnibus Response to Post-Fairness Hearing Submissions, ECF No. 6467
195. Order, ECF No. 6479
196. Class Counsel and the NFL Parties' Joint Submission in Response to the February 2, 2015 Order of the Court, ECF No. 6481
197. Class Action Settlement Agreement, ECF No. 6481-1
198. Class Action Settlement Agreement as Amended, ECF No. 6481-2
199. Supplemental Objection to Settlement, ECF No. 6484
200. Memorandum, ECF No. 6509
201. Final Order and Judgement, ECF No. 6510
202. Posting of List of Opt Outs Pursuant to the Final Order and Judgement, ECF No. 6533
203. NFL Concussion Settlement: Timely opt Out Requests Containing All Information Required by Section 14.2(c), ECF No. 6533-1
204. NFL Concussion Settlement: Opt Out Requests That Were Untimely and/or Did Not Contain All Information Required by Section 14.2(c), ECF No. 6533-2
205. Amended Final order and Judgement, ECF No. 6534
206. Conditional Transfer Order (CTO-97), ECF No. 6811
207. United States Court of Appeals for the Third Circuit, ECF No. 6840
208. United States Court of Appeals for the Third Circuit, ECF No. 6840-x
209. Order, ECF No. 6886
210. Estate of Kevin Turner's Motion to Resolve Attorney Fee Dispute and to Appear as Counsel For Paul Raymond Turner, The Personal Representative of the Estate of Kevin Turner, ECF No. 7029
211. Order, ECF No. 7029-1
212. Authority to Represent, ECF No. 7029-2
213. Affidavit of Kevin Turner in Support of Final Approval of Settlement and Certification of Class and Subclasses, ECF No. 7029-3
214. Exhibit C, ECF No. 7029-4
215. Exhibit D, ECF No. 7029-5
216. Authority to Represent, ECF No. 7029-6
217. Exhibit F, ECF No. 7029-7
218. Exhibit G, ECF No. 7029-8
219. Exhibit H, ECF No. 7029-9
220. Amended Authority to Represent, ECF No. 7029-10
221. Exhibit J, ECF No. 7029-11
222. Faneca Objector's Petition for an Award of Attorneys' Fees and Expenses, ECF No. 7070
223. Faneca Objectors' Memorandum of Law in Support of petition for an Award of Attorney's Fees and Expenses, ECF No. 7070-1
224. Declaration of Steven F. Molo in Support of Petition for an Award of Attorneys' Fees and Expenses, ECF No. 7070-2
225. Response in Opposition to Estate of Kevin Turner's Motion to resolver Attorney Fee Dispute, ECF No. 7071

226. Report of Professor Charles silver On Matters Raised by the Estate of Kevin Turners' Motion to Resolve Attorney Fee Dispute and to Appear as Counsel for Paul Raymond Turner, the Personal Representative of the Estate of Kevin Turner, ECF No. 7071-1
227. Authority to Represent, ECF No. 7071-2
228. First Amended Complaint, ECF No. 7071-3
229. Short Form Complaint, ECF No. 7071-4
230. Notice of Joinder in Podhurst Orseck, P.A.'s Response in Opposition to Estate of Kevin Turner's Motion to Resolve Attorney Fee Dispute, ECF No. 7073
231. Notice of Joinder in Podhurst Orseck, P.A.'s Response in Opposition to Estate of Kevin Turner's Motion to Resolve Attorney Fee Dispute, ECF No. 7075
232. Corrected Joinder Brief of the Locks Law firm in Opposition to Motion of Estate of Kevin Turner, ECF No. 7085
233. Corrected Joinder Brief of the Locks Law firm in Opposition to Motion of Estate of Kevin Turner, ECF No. 7085
234. Co-Lead Class Counsel's Initial Response to Petition of Faneca Objectors Counsel for an Award of Attorney's Fees and Costs, ECF No. 7106
235. Certificate of Service, ECF No. 7109
236. Estate of Kevin Turner's Reply in Further Support of its Motion to Resolve Attorney Fee Dispute, ECF No. 7114
237. Certificate of Service, ECF No. 7116
238. Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7151
239. Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7151-1
240. Declaration of Christopher A. Seeger in Support of Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards for Class Representatives, ECF No. 7151-2
241. Compendium of Exhibits for Declaration of Christopher A. Seeger in Support of Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards for Class Representatives, ECF No. 7151-3
242. Declaration of Orran L. Brown, Sr, On Class Communications, Registrations and Cost Projections, ECF No. 7151-4
243. Declaration of Matthew L. Garreston, ECF No. 7151-5
244. Declaration of Levin Sedran & Berman in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-6
245. Declaration of Gene Locks, esquire in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-7

262. Declaration of David A. Rosen in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-24
263. Declaration of Frederick Schenk in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-25
264. Declaration of Anthony Tarricone in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-26
265. Declaration of Charles S. Zimmerman in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7151-27
266. An Empirical Study of Class Action Settlements and Their Fee Awards, ECF No. 7151-28
267. [Proposes] Order Granting Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7151-29
268. Opposition to Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees and Adoption of a Set-Aside of Each Monetary Award, and Opposition to Lamkenmolo's Fee Petition, ECF No. 7161
269. Motion for Entry of Case Management Order Governing Applications for Attorneys' Fees; Cost Reimbursements; and Future Fee Set-Aside, ECF No. 7176
270. Response and Limited Opposition of the Estate of Kevin Turner to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees and Adoption of a Set-Aside of Each Monetary Award, ECF No. 7205
271. Co-Lead Class Counsels' Motion for Extension of Time to File Reply Memorandum in Support of Their Fee Petition and to Set Coordinated Briefing Schedule, ECF No. 7228
272. Armstrong Objectors' Petition for an Award of Attorneys' Fees, ECF No. 7230
273. [Corrected] Opposition to Co-Lead Class Counsel's Motion to Set Coordinated Briefing Schedule, ECF No. 7231
274. Armstrong Objectors' Memorandum of Law in Support for Their Petition for an Award of Attorneys' Fees, ECF No. 7232
275. Declaration of Richard L. Coffman in Support of the Armstrong Objectors' Petition for Award of Attorneys' Fees, ECF No. 7232-1
276. Declaration of Mitchell A. Toups in Support of the Armstrong Objectors' Petition for Award of Attorneys' Fees, ECF No. 7232-2
277. Declaration of The Webster Law Firm in Support of the Objector Armstrong's Petition for Award of Attorneys' Fees, ECF No. 7232-3
278. Declaration of The Warner Law Firm in Support of Objector Armstrong's Petition for Award of Attorneys' Fees, ECF No. 7232-4
279. Faneca Objectors Response to Co-Lead Class Counsel's Motion for Extension of Time, ECF No. 7233
280. Curtis L. Anderson's Supplemental Objection to Class Counsel's Fee Petition, ECF No. 7237
281. Order, ECF No. 7238

282. Order, ECF No. 7246
283. Order, ECF No. 7261
284. Memorandum in Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7282
285. Pro Se Plaintiff, Ricky Dixon, Response to Simmerman Reed Notice and Motion for Attorney Lien and Limited Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7299
286. Response and Opposing Motion to Zimmerman Reed's Notice and motion for Attorney Lien, ECF No. 7313
287. Certificate of Service, ECF No. 7313-1
288. Agreement for Legal Services, ECF No. 7313-2
289. Exhibit 2, ECF No. 7313-3
290. Order, ECF No. 7313-4
291. Short Form Complaint, ECF No. 7313-5
292. NFL Concussion Questionnaire, ECF No. 7313-6
293. Exhibit 6, ECF No. 7313-7
294. Exhibit 7, ECF No. 7313-8
295. Exhibit 10, ECF No. 7313-9
296. Memorandum in Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7344-55
297. Memorandum in opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7346
298. Objection and Memorandum in Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7350
299. Objection of Ronald Sabal to Petition for Attorneys' Fees, Costs and Holdback, ECF No. 7351
300. Class Members' Objection to Petition for Attorneys' Fees, Costs, and 5% Holdback on Awards, ECF No. 7353
301. Declaration of Representation in Support of Response in Opposition and Objections to Co-Lead Class Counsels' Petition for Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7354-1
302. Objection to Petition for Attorneys' Fees, ECF No. 7354-2
303. Response in Opposition and Objections to Co-Lead Class Counsels' Petition for Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7354
304. Memorandum of Law in Support of the Alexander Objector's Objections to and in Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees,

- Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7355
305. Certain Plaintiffs' Response in Opposition to Petition for Adoption of Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, ECF No. 7356
 306. Memorandum in Opposition to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7359
 307. Objection of Estate of Wally Hilgenberg and Estate of Peter Duranko to Petition for Attorney's Fees by Class Counsel Anapol Weiss, ECF No. 7360
 308. Notice of Joinder in Estate of Kevin Turner's Response and Limited Opposition to Co-Lead Counsel's Petition for an Award of Attorneys' Fees and Adoption of a Set-Aside of Each Monetary Award, ECF No. 7363
 309. Exhibit A, ECF No. 7363-1
 310. Email Exchange, ECF No. 7363-2
 311. Email Exchange, ECF No. 7363-3
 312. Email Exchange, ECF No. 7363-4
 313. Email Exchange, ECF No. 7363-5
 314. Petition of Objectors Preston and Katherine Jones for Award of Attorney's Fees for Successful Efforts to Improve the Settlement for NFL Europe League Players, ECF No. 7364
 315. Memorandum in Support of Petition of Objectors Preston and Katherine Jones for Award of Attorney's Fees for Successful Efforts to Improve the Settlement for NFL Europe League Players, ECF No. 7364-1
 316. Declaration of James T. Capretz in Support of Petition of Objectors Preston and Katherine Jones for Award of Attorney's Fees for Successful Efforts to Improve the Settlement for NFL Europe League Players, ECF No. 7364-2
 317. Objection of Preston Jones and Katherine Jones to Class Action Settlement, ECF No. 7364-3
 318. Objection of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick "Rock" Cartwright, Jeff Rohrer, and Sean Considine to Class Action Settlement, ECF No. 7364-4
 319. Objection by Retired NFL Players Reginald Slack and Matthew Rice to Proposed Class Settlement, ECF No. 7364-5
 320. Exhibit D, ECF No. 7364-6
 321. Exhibit E, ECF No. 7364-7
 322. Objections to June 25, 2014 Class Action Settlement Agreement, ECF No. 7364-8
 323. Objection of Craig Heimburger and Dawn Heimburger, ECF No. 7364-9
 324. [Proposed] Order Granting Petition of Objectors Preston and Katherine Jones for Award of Attorneys' Fees for Successful Efforts to Improve the Settlement for NFL Europe League Players, ECF No. 7364-10
 325. Notice of Joinder in Estate of Kevin Turner's Motion to Resolve Attorney Fee dispute and Appearance as Counsel for Steven Anthony Smith, ECF No. 7365
 326. Faneca Objectors' Preliminary Response in Support of Their Petition for an Award of Attorney's Fees and Expenses, ECF No. 7366
 327. Expert Declaration of Joseph J. Floyd, March 27, 2017, ECF No. 7366-1

328. Armstrong Objectors' Memorandum of Law in Support of Their Petition for an Award of Attorneys' Fees, ECF No. 7366-2
329. Revised Summary of Expenses, ECF No. 7366-3
330. Joinder to Objections to Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7367
331. Curtis L. Anderson's Second Supplemental Objection to Class Counsel's Fee Petition, ECF No. 7370
332. Memorandum of Retired NFL Player Andrew Stewart Opposing the Fee Proposed Five Percent Set-Aside of the Monetary Award, ECF No. 7371
333. Objections to Co-Lead Class Counsel's Request for 5% Set Aside, ECF No. 7373
334. Notice of Joinder in Various Objections of Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Other Relief, ECF No. 7375
335. Objection to Five Percent Set-Aside From All Awards Requested in Co-Lead Counsels' Petition for an Award of Attorney's Fees, and Incorporated Memorandum of Law, ECF No. 7404
336. Order, ECF No. 7446
337. Response of Class Counsel The Locks Law Firm to Oppositions by Objectors to Co-Lead Counsel's Petition For Attorney's Fees, ECF No. 7463
338. Affidavit of Gene Locks, ECF No. 7463-1
339. Co-Lead Class Counsel's Omnibus Reply Memorandum in Further Support of Petition for Award of Attorney's Fees and Reimbursement of Expenses, Adoption of Set-Aside From Monetary and Derivative Claimant Awards, and Case Contribution Awards for class Representatives, and in Opposition to Objectors' Cross-Petitions for Awards of Attorneys' Fees and Expenses, ECF No. 7464
340. Supplemental Declaration of Christopher A. Seeger in Further Support of Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside from Monetary and Derivative Claimant Awards, and Case Contribution Awards for Class Representatives, and in Opposition to Objectors' Cross-Petitions for Awards of Attorneys' Fees and Expenses, ECF No. 7464-1
341. Declaration of Bradford R. Sohn in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 7464-2
342. Petition of Objecting Class Members Pursuant to Fed. R. Civ. P. 23(f) for Leave to Appeal from the District Court's Order Granting Settlement Class Certification, ECF No. 7464-3
343. Reply in Support of Petition of Objecting Class Members Pursuant to Fed. R. Civ. P. 23(f) for Leave to Appeal from the District Court's Order Granting Settlement Class Certification, ECF No. 7464-4
344. Corrected Opening Brief of Appellants Raymond Armstrong, Larry Barnes, Larry Brown, Drew Coleman, Kenneth Davis, Dennis DeV Vaughn, William B. Duff, Kelvin Mack Edwards, Sr., Phillip E. Epps, Gregory Evans, Charles L. Haley, Sr., Alvin Harper, Mary Hughes, James Garth Jax, Ernest Jones, Michael Kiselak, Dwayne Levels, Darryl Gerard Lewis, Gary Wayne Lewis, Jeremy Loyd, Nathaniel Newton, Jr., Clifton L. Odom, Evan Ogelsby, Solomon Page, Hurles Scales, Jr., Barbara Scheer,

- Kevin Rey Smith, Willie T. Taylor, George Teague, and Curtis Bernard Wilson, ECF No. 7464-5
345. Reply Brief of Appellants Raymond Armstrong, Larry Barnes, Larry Brown, Drew Coleman, Kenneth Davis, Dennis DeVaughn, William B. Duff, Kelvin Mack Edwards, Sr., Phillip E. Epps, Gregory Evans, Charles L. Haley, Sr., Alvin Harper, Mary Hughes, James Garth Jax, Ernest Jones, Michael Kiselak, Dwayne Levels, Darryl Gerard Lewis, Gary Wayne Lewis, Jeremy Loyd, Nathaniel Newton, Jr., Clifton L. Odom, Evan Ogelsby, Solomon Page, Hurles Scales, Jr., Barbara Scheer, Kevin Rey Smith, Willie T. Taylor, George Teague, and Curtis Bernard Wilson, ECF No. 7464-6
346. Opposition of Class Plaintiffs-Appellees to Armstrong Appellants' Motion for Judicial Notice, ECF No. 7464-7
347. Appellants' Opposition to Class Plaintiffs-Appellees' Motion to Expedite Appeals, ECF No. 7464-8
348. Petition for a Writ of Certiorari, ECF No. 7464-9
349. Reply Brief for Petitioners, ECF No. 7464-10
350. Raymond Armstrong, et al., Petitioners v. National Football League, et al., ECF No. 7464-11
351. An Updated Analysis of the NFL Concussion Settlement, ECF No. 7464-12
352. Declaration of Claims Administrator, Orran I., Brown, Sr., ECF No. 7464-13
353. Response in Opposition to Steven Smith's Notice of Joinder in the Estate of Kevin Turner's Motion to Resolve Attorney's Fee Dispute, ECF No. 7465
354. Reply to Response in Opposition to Steven Smith's Notice of Joinder in the Estate of Kevin Turner's Motion to Resolve Attorney's Fee Dispute, ECF No. 7524
355. Alexander Objectors' Response and Objection to Supplemental Evidence Offered in Co-Lead Class Counsels' Omnibus Reply in Opposition to Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 7533
356. Faneca Objectors' Reply in Support of Their Petition for an Award of Attorneys' Fees and Expenses, ECF No. 7550
357. Rebuttal Expert Declaration of Joseph J. Floyd, ECF No. 7550-1
358. Reply in Support of Petition of Objectors Preston and Katherine Jones for Award of Attorneys' Fees for Successful Efforts to Improve the Settlement for NFL Europe League Players (ECF#7364), ECF No. 7555
359. Petition to Establish Attorney's Lien, ECF No. 7566
360. Memorandum of Law in Opposition to Objector Petition for an Award of Attorneys' Fees and Expenses, ECF No. 7621
361. Faneca Objectors' Reply in Further Support of Their Petition for an Award of Attorney's Fees and Expenses, ECF No. 7708
362. Joinder of Rickey Dixon and Lorraine Dixon in Estate of Kevin Turner's Motion to Resolve Attorney's Fee Dispute, ECF No. 7850
363. Response in Opposition to the Joinder of Ricky Dixon and Lorraine Dixon in Estate of Kevin Turner's Motion to Resolve Attorney's Fee Dispute, ECF No. 7942
364. ABB Order, ECF No. 8030
365. Respondents' Amended Objections to Prior Attorney Liens and Incorporated Memorandum of Law, ECF No. 8231

366. Order, ECF No. 8310
367. Request for Clarification of Order to Show Cause Regarding Court-Appointed Expert and Request for Extension of Time to Respond to Order to Show Cause by Class Counsel the Locks Law Firm, ECF No. 8327
368. Respectful Request for the Court to Appoint the Magistrate Judge to Determine Proper Allocation of Common Benefit Fund, ECF No. 8330
369. The Alexander Objector's Response to the Court's Show Cause Order of August 23, 2017 Regarding Appointment of a Court Expert on Attorney's Fees, ECF No. 8350
370. Co-Lead Class Counsel's Response to "Respectful Request" to Appoint the Magistrate Judge to Determine Allocation of Common Benefit Fund, ECF No. 8354
371. Reply to Co-Lead Class Counsel's Response to "Respectful Request" to Appoint the Magistrate Judge to Determine Allocation of Common Benefit Fund, ECF No. 8364
372. Plaintiffs' Attorney Meeting of the NFL Brain Injury Litigation MDL, ECF No. 8364-1
373. Order for a Detailed Submission on Lawyers' Fees, ECF No. 8367
374. Co-Lead Class Counsel's Notice to the Court Regarding Retaining William Rubenstein as Advisor to Plaintiff's Steering Committee, ECF No. 8372
375. Order, ECF No. 8376
376. First Supplement in Support of the Alexander Objector's Objections to and in Opposition to Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards to Class Representatives, ECF No. 8395
377. Memorandum of Law of the National Football League and NFL Properties LLC in Opposition to Settlement Class Member Yvonne Sagapolutele's Motion to Modify the Amended Final Order and Judgment, ECF No. 8430
378. Statement of co-Lead Class Counsel in Support of the Opposition by the NFL Parties to Settlement Class Member Yvonne Sagapolutele's Motion to Modify the Amended Final Order and Judgement, ECF No. 8431
379. Opposition of Co-Lead Class Counsel, the National Football League and NFL Properties LLC to the Motion of Xilaw to Determine Proper Administration of Claims Under the Settlement Agreement, ECF No. 8432
380. Declaration of Orran L. Brown, Sr. , ECF No. 8432-1
381. Declaration of David E. Smith, ECF No. 8432-2
382. Co-Lead Class Counsel's Memorandum in Opposition to Motion of Case Strategies Group (F/K/A NFL Case Consulting, LLC), It Strategies Group, Craig Sienema, James McCabe, Liberty Settlement Solutions, LLC, Liberty Contingent Receivables, LLC, Liberty Settlement Funding, JMMHCS Holdings, LLC., and Marc Hermes to Certify Questions for Immediate Appeal and for Stay, ECF No. 8433
383. Co-Lead Class Counsel's Memorandum of Law on the Question Referred to this Court by the United States District Court for the Southern District of New York in Consumer Financial Protection Bureau v. RD Legal Funding, LLC, No. 1:17-CV-00890 (LAP)(S.D.N.Y.), ECF No. 8434
384. Memorandum of RD Legal Funding, LLC, RD Legal Finance, LLC, RD Legal Funding Partners, LP, and Roni Dersovitz Re; The Assignment of Settlement Proceeds, ECF No. 8435

385. Memorandum of Law of the Consumer Financial Protection Bureau and the People of the State of New York on Whether the NFL Concussion Litigation Settlement Agreement Forbids Assignments of Settlement Benefits, ECF No. 8438
386. Co-Lead Class Counsel's Consolidated Memorandum (1) In opposition to the Alexander Objectors' Motion to Compel Compliance with CMO5, and (2) In Response to Their Latest Unauthorized Post-Briefing Supplementation of Their Objections to the Common Benefit Fee Petition, ECF No. 8440
387. Declaration of Orran L. Brown, Sr., ECF No. 8440-1
388. Reply in Support of Class Member Yvonne Sagapolutele's Motion to Modify the Amended Final Order and Judgement [ECF 8263], ECF No. 8442
389. Movant Retired NFL Players Represented by Xilaw's Reply to the Opposition of Co-Lead Class Counsel, The National Football League and NFL Properties LLC to Their Motion to Determine Proper Administration of Claims Under the Settlement Agreement, ECF No. 8444
390. Reply in Support of Motion of Nonparties Case Strategies Group, It Strategies Group, Craig Sienema, James McCabe, Liberty Settlement Solutions, LLC, Liberty Contingent Receivables, LLC, Liberty Settlement Funding, JMMHCS Holdings, LLC, and Marc Hermes to Certify Questions for Immediate appeal and for Stay, ECF No. 8446
391. Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8447
392. Exhibit to Declaration of Christopher A. Seeger in Support of Proposed Allocation, ECF No. 8447-1
393. Declaration of Brain T. Fitzpatrick, ECF No. 8447-2
394. Order, ECF No. 8448
395. The Alexander Objector's Consolidated Reply to Co-Lead Class Counsel's Response to their Motion to Compel Compliance with CMO5 and their Supplemental Objection to Co-Lead Class Counsel's Fee Petition, ECF No. 8449
396. Motion to for Leave to File Corrected Reply in Place of Filed On October 5, 2017 [ECF No. 8444] and Motion for Enlargement of Time, ECF No. 8456
397. Co-Lead Class Counsel's Reply Memorandum of Law on the Question Referred to this Court by the United States District Court for the Southern District of New York in Consumer Financial Protection Bureau v. RD Legal Funding, LLC, No. 1:17-CV-00890 (LAP) (S.D.N.V) , ECF No. 8457
398. Consumer Financial Protection Bureau and the People of the State of New York's Reply to RD Legal Funding, LLC, Et Al.'s Memorandum on Assignments of Settlement Benefits, ECF No. 8458
399. Reply Memorandum of Law of RD Legal Funding, LLC, RD Legal Finance, LLC, RD Legal Funding Partners, LP, and Roni Dersovitz, Re: The Assignment of Settlement Proceeds, ECF No. 8459
400. Co-Lead Class Counsel's Motion to (1) Direct Claims Administrator to Withhold any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lenders and Claims Services Providers, and (2) Direct Disclosure to the Claims Administrator of Existence of Class Member Agreements with All Third Parties, ECF No. 8470

401. Co-Lead Class Counsel's Memorandum in Support of Motion to (1) Direct Claims Administrator to Withhold any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lenders and Claims Services Providers, and (2) Direct Disclosure to the Claims Administrator of Existence of Class Member Agreements with All Third Parties, ECF No. 8470-1
402. Declaration of Orran L. Brown, Sr., ECF No. 8470-2
403. Armstrong Objectors' Response to Class Counsel's Proposed Allocation of Common Benefit Attorney's Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8532
404. Affidavit of Thomas V. Girardi, ECF No. 8556-2
405. Counter-Declaration of Jason E. Luckasevic in Response to the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8557
406. Declaration of David A. Rosen in Response to Co-Lead Class Counsel's Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8576
407. Counter Declaration of Craig R. Mitnick in Response to Co-Lead Class Counsel, Christopher Seeger's Declaration for the Allocation of an Award of Common Benefit Attorney's Fees and Reimbursement of Common Benefit Costs and Expenses, ECF No. 8653
408. Declaration of Bruce A. Hagen in Support of Hagen, Roskopf & Earle's opposition to Christopher A. Seeger's Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8697
409. Co-Lead Class Counsel Anapol Weiss's Proposed Alternative Methodology for the Allocation of common Benefit Attorneys' Fees (ECF No. 8447), ECF No. 8701
410. Declaration of Gene Locks, Class Counsel, in Response to the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8709
411. NFL Defendants' Opposition to Seau Plaintiff's Motion for Extension of Page Limits (ECF No. 8465), ECF No. 8711
412. Counter-Declaration of Thomas V. Girardi in Response to the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8719
413. Declaration of Jason E. Lucasevic in Support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses, ECF No. 8719-1
414. Declaration of Anthony Tarricone, Esq. In Support of the Opposition to Co-Lead Counsel's Petition for an Award of Common Benefit Attorney's Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent and Certain Incentive Awards, ECF No. 8720
415. Email Exchange, ECF No. 8720-1

416. Kreindler & Kreindler LLP Opposition to Co-Lead Counsel's Petition for an Award of Common Benefit Attorney's Fees, Reimbursement of Costs and Expenses, Adoption of a Set-Aside of Five Percent and Certain Incentive Awards filed October 10, 2017, ECF No. 8720-2
417. Declaration of Michael L. McGlamry Responding in Opposition to Christopher A. Seeger's Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8721
418. Counter-Declaration of Charles S. Zimmerman in Response to Proposed Allocation of Common Benefit Attorney's Fees Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8722
419. Response to Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorney's Fees Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives and Motion to Prioritize and Separate Vitally Needed Player Compensation Payments From Any and All Attorneys' Fees Awards or Requests and a Request that the Court Appoint a Special Master to Deal with and Determine the validity and Appropriate Amounts of Claimed Attorneys' Fees as to More Fully Assis the Court's Goal of Making Player Payments a Reality Rather than Unfulfilled Promises, ECF No. 8723
420. Declaration of Derriel C. McCorvey in Support of McCorvey Law, LLC's Opposition to Christopher A. Seeger's Proposed Allocation of Common Benefit Attorney's Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8724
421. Declaration of Lance H. Lubel, ECF No. 8725
422. Faneca Objectors' Response to the Declaration of Christopher A. Seeger Proposing and Allocation of Common Benefit Attorneys' Fees and Expenses, ECF No. 8726
423. Counter-Declaration of James T. Capretz in Response to Proposed Allocation of Common Benefit Attorney's Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8727
424. Declaration of Steven C. Marks In Response to Co-Lead Counsel's Proposed Allocation of Common Benefit Attorneys' Fees and Expenses, ECF No. 8728
425. Allen Retired Players Response Adopting and Joining the Yerrid Law Firm Response to Declaration of Chris Seeger and Motion to Prioritize [ECF No.8723], ECF No. 8729
426. Legacy Pro Sports, LLC and Brandon Siler's Response in Opposition to Co-Lead Class Counsel's Requested Relief in its Motion Filed on October 23, 2017, ECF No. 8825
427. Joint Status Report on the Implementation of the Settlement Program, ECF No. 8881
428. Declaration of Orran L. Brown, Sr. On Settlement Program Implementation After the Effective Date, ECF No. 8881-1
429. Declaration of Matthew L. Garretson, ECF No. 8881-2
430. Certificate of Service, ECF No. 8913
431. Co-Lead Class Counsel's Memorandum in Opposition to Neurocognitive Football Lawyers, PLLC's and the Yerrid Law Firm's "Motion to Prioritize", ECF No. 8914
432. Email Exchange, ECF No. 8916
433. Email Exchange, ECF No. 8917

434. Movant Retired NFL Players Motion for Reconsideration of Their Motion to Determine Proper Administration of Claims Under the Settlement Agreement [ECF No. 8267], ECF No. 8923
435. Notice, ECF No. 8930
436. Memorandum of Walker Preston Capital Holdings, LLC, in Support of its Motion to Intervene for the Limited Purpose of Opposing on Jurisdictional Grounds Co-Lead Class Counsel's Motion to (1) Direct Claims Administrator to Withhold Any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lenders and Claims Services Providers, and (2) Direct Disclosure to Claims Administrator of Existence of Class Member Agreements with All Third Parties (ECF No. 8470), ECF No. 8932-3
437. Response of Nonparty Case Strategies Group in Opposition to Co-Lead Class Counsel's Motion to (1) Direct claims Administrator to Withhold Any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lending and Claims Service Providers, and (2) Direct Disclosure to Claims Administrator of the Existence of Class Member Agreements with All Third Parties, ECF No. 8933
438. Omnibus Reply Declaration of Christopher A. Seeger as to Responses, Objections and Counter-Declarations to Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8934
439. Supplemental Declaration of Brian T. Fitzpatrick, ECF No. 8934-1
440. Sur-Reply Counter-Declaration of Jason E. Luckasevic in Response to Omnibus Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives, ECF No. 8937-2
441. Non-Parties Preferred Capital Funding, Inc., Preferred Capital Funding-Nevada, LLC, Preferred Capital Funding-Missouri, LLC, Preferred Capital Funding-Ohio, LLC, and Brian Garelli's Motion for a Protective Order Regarding Co-Lead Class Counsel's Request for the Production of Documents and Interrogatories, ECF No. 8938
442. Memorandum of Peachtree Funding Northeast, LLC and Related Entities in Response to Co-Lead Class Counsel's Motion to (1) Direct Claims Administrator to Withhold any Portions of Class Member Monetary Awards Purportedly Owed to Certain Third-Party Lenders and Claims Services Providers, and (2) Direct Disclosure to the Claims Administrator of Existence of Class Member Agreements with All Third Parties, ECF No. 8939
443. Surreply Declaration of Michael L. McGlamry in Response to the Omnibus Reply Declaration of Christopher A. Seeger, ECF No. 8963-2

B. Case No. 2-11-cv-05209

1. NFL's Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), ECF No. 19
2. Memorandum of Law in Support of the National Football League's Motion to Dismiss the Amended Complaint, ECF No. 19-1
3. Order, ECF No. 19-2
4. Declaration of Dennis L. Curran, ECF No. 19-3

C. Case No. 2-11-cv-08394

1. Notice of Removal, ECF No. 1
2. Motion to Remand, ECF No. 21

II. Attorney Lien Filings, Case No. 2:12-md-02323

1. 6518 Pope McGlamry – Cosey Coleman
2. 6520 Pope McGlamry – Kenneth Clarke
3. 6522 Pope McGlamry – Leeland McElroy
4. 6524 Pope McGlamry – Sean Love
5. 6704 N/A – Mistake filing
6. 6743 Pope McGlamry – Fred Banks
7. 6745 Pope McGlamry – Arthur Cox
8. 6747 Pope McGlamry – Aveion Cason
9. 6749 Pope McGlamry – Jamie R. Duncan
10. 6778 Bondurant, Mixson & Elmore, LLP – Kenneth Callicutt
11. 6780 Bondurant, Mixson & Elmore, LLP – DeMarcus Curry
12. 6785 Pope McGlamry – Anthony Blaylock
13. 6787 Pope McGlamry – Alphonso Carreker
14. 6789 Pope McGlamry – Major Everett
15. 6791 Pope McGlamry – Major Everett
16. 6793 Pope McGlamry – Michael Nattiel
17. 6795 Pope McGlamry – Christian Morton
18. 6801 Pope McGlamry – Eric Hipple
19. 6804 McCorvey Law, LLC et al. – Alexander Cooper
20. 6806 McCorvey Law, LLC et al. – Chris Montaine Smith
21. 6808 McCorvey Law, LLC et al. – Carl Simpson
22. 6810 McCorvey Law, LLC et al. – George Seals
23. 6823 McCorvey Law, LLC et al. – Carl Simpson
24. 6825 McCorvey Law, LLC et al. – Alexander Cooper
25. 6827 McCorvey Law, LLC et al. – Chris Montaine Smith
26. 6854 Pope McGlamry – Damen Robinson
27. 6856 Pope McGlamry E– d King
28. 6858 Pope McGlamry – Adalius Thomas
29. 6921 Pope McGlamry – Ronney Daniels
30. 6925 Pope McGlamry – Lenzie Jackson
31. 6927 Pope McGlamry – Honor Jackson, Jr.
32. 6929 Pope McGlamry – Dwight Johnson
33. 6931 Pope McGlamry – Garrison Hearst
34. 6941 Zimmerman Reed LLP – Ronald Acks
35. 6942 Zimmerman Reed LLP – Steven Baumgartner
36. 6943 Zimmerman Reed LLP – Bobby Bell
37. 6944 Zimmerman Reed LLP – Michael Butler
38. 6946 Zimmerman Reed LLP – W. Pat Carter

39. 6947 Zimmerman Reed LLP – Clifford Charlton
40. 6948 Zimmerman Reed LLP – Michael Clark
41. 6949 Zimmerman Reed LLP – Curly Culp
42. 6951 Zimmerman Reed LLP – George Cumby
43. 6953 Zimmerman Reed LLP – Derrick Deese
44. 6954 Zimmerman Reed LLP – Chris Dieterich
45. 6956 Zimmerman Reed LLP – Titus Dixon
46. 6958 Zimmerman Reed LLP – Hart Lee Dykes
47. 6960 Zimmerman Reed LLP – Ronald Egloff
48. 6962 Zimmerman Reed LLP – Ricky Feacher
49. 6963 Zimmerman Reed LLP – Kenneth Greene
50. 6964 Zimmerman Reed LLP – Mark Higgs
51. 6965 Zimmerman Reed LLP – Leander Jordan
52. 6966 Zimmerman Reed LLP – Gary Lewis
53. 6967 Zimmerman Reed LLP – Anthony Liscio
54. 6968 Zimmerman Reed LLP – William Lueck
55. 6969 Zimmerman Reed LLP – Ernie Mills
56. 6971 Zimmerman Reed LLP – Billy Milner
57. 6972 Zimmerman Reed LLP – Larry Craig Morton
58. 6974 Zimmerman Reed LLP – Elston Ridgle
59. 6975 Zimmerman Reed LLP – Jim Rourke
60. 6977 Zimmerman Reed LLP – Reggie Swinton
61. 6978 Zimmerman Reed LLP – Myron Taliaferro
62. 6980 Zimmerman Reed LLP – Anthony Thompson
63. 6981 Zimmerman Reed LLP – Stuart Voigt
64. 6982 Zimmerman Reed LLP – Wayne Walker
65. 6983 Zimmerman Reed LLP – Keith Washington
66. 6985 Zimmerman Reed LLP – Donald Westbrook, Jr.
67. 6987 Zimmerman Reed LLP – Donnell Woolford
68. 6989 Law Office of Wayne E. Ferrell, Jr., et al. –Glen Collins
69. 7034 Pope McGlamry – Robert Chancey
70. 7036 Pope McGlamry – Hayward Clay
71. 7038 Pope McGlamry – Zachary Piller
72. 7040 Pope McGlamry – Reginald Bernard Slack
73. 7042 Pope McGlamry – Charles Smith
74. 7044 Pope McGlamry – Joseph Brian Johnson
75. 7046 Pope McGlamry – David Rocker
76. 7048 Pope McGlamry – Johnny Rutledge
77. 7050 Pope McGlamry – Reggie Brown
78. 7052 Pope McGlamry – Wendell H. Davis
79. 7054 Pope McGlamry – Vidal Carlin
80. 7056 Pope McGlamry – Billy Thurman Jackson –
81. 7061 McCorvey Law, LLC – Reginald Freeman
82. 7064 Podhurst Orseck, P.A. – Albert Connell
83. 7064 Podhurst Orseck, P.A. – Ben Coates
84. 7064 Podhurst Orseck, P.A. – Bernard Whittington

85. 7064 Podhurst Orseck, P.A. – Carlton Bailey–Jones
86. 7064 Podhurst Orseck, P.A. – Charles Frye
87. 7064 Podhurst Orseck, P.A. – Charlie Garner, III
88. 7064 Podhurst Orseck, P.A. – Freddie Lee Solomon, Jr.
89. 7064 Podhurst Orseck, P.A. – Frederick Beasley
90. 7064 Podhurst Orseck, P.A. – Joseph Odom
91. 7064 Podhurst Orseck, P.A. – Larry Bowie
92. 7064 Podhurst Orseck, P.A. – Michael Wiley
93. 7064 Podhurst Orseck, P.A. – Mike Arthur
94. 7064 Podhurst Orseck, P.A. – Omar Stoutmire
95. 7064 Podhurst Orseck, P.A. – Reginald Myles
96. 7064 Podhurst Orseck, P.A. – Walter Williams
97. 7064 Podhurst Orseck, P.A. – Taveres T.J. Slaughter
98. 7064 Podhurst Orseck, P.A. – Demetric Evans
99. 7064 Podhurst Orseck, P.A. – Jesse Chatman
100. 7064 Podhurst Orseck, P.A. – Joseph Jefferson
101. 7064 Podhurst Orseck, P.A. – Rodney Bailey
102. 7064 Podhurst Orseck, P.A. – Barron Tanner
103. 7064 Podhurst Orseck, P.A. – Scott Tinsley
104. 7064 Podhurst Orseck, P.A. – Adam Schreiber
105. 7064 Podhurst Orseck, P.A. – Anthony G. Griggs
106. 7064 Podhurst Orseck, P.A. – Anthony McCoy
107. 7064 Podhurst Orseck, P.A. – Anthony Sherrod Davis
108. 7064 Podhurst Orseck, P.A. – Armegis Spearman
109. 7064 Podhurst Orseck, P.A. – Ben Coleman
110. 7064 Podhurst Orseck, P.A. – Bobby J. Hamilton
111. 7064 Podhurst Orseck, P.A. – Brandon Haw
112. 7064 Podhurst Orseck, P.A. – Bruce Thornton
113. 7064 Podhurst Orseck, P.A. – Chartric Chuck Darby
114. 7064 Podhurst Orseck, P.A. – Darryl Ashmore
115. 7064 Podhurst Orseck, P.A. – Daryl Porter
116. 7064 Podhurst Orseck, P.A. – David Ball
117. 7064 Podhurst Orseck, P.A. – Derek H. Ross
118. 7064 Podhurst Orseck, P.A. – Donny Brady
119. 7064 Podhurst Orseck, P.A. – Douglas E. Evans
120. 7064 Podhurst Orseck, P.A. – Earl Little
121. 7064 Podhurst Orseck, P.A. – Ed–die Boo Williams
122. 7064 Podhurst Orseck, P.A. – Edwin Mulitalo
123. 7064 Podhurst Orseck, P.A. – Elijah Williams
124. 7064 Podhurst Orseck, P.A. – Fred Weary
125. 7064 Podhurst Orseck, P.A. – Gregory Favors
126. 7064 Podhurst Orseck, P.A. – Jacoby Rhinehart
127. 7064 Podhurst Orseck, P.A. – Jamal Robertson
128. 7064 Podhurst Orseck, P.A. – Jay Jamal Foreman
129. 7064 Podhurst Orseck, P.A. – Jeff Herrod
130. 7064 Podhurst Orseck, P.A. – Kelvin Harris

131. 7064 Podhurst Orseck, P.A. – Ken Dilger
132. 7064 Podhurst Orseck, P.A. – Kevan Barlow
133. 7064 Podhurst Orseck, P.A. – Kyle Turley
134. 7064 Podhurst Orseck, P.A. – Leon Searcy
135. 7064 Podhurst Orseck, P.A. – Marcellus Rivers
136. 7064 Podhurst Orseck, P.A. – Marques McFadden
137. 7064 Podhurst Orseck, P.A. – Maurice A. Morris
138. 7064 Podhurst Orseck, P.A. – Max Lane
139. 7064 Podhurst Orseck, P.A. – Michael Downs
140. 7064 Podhurst Orseck, P.A. – Paris Johnson
141. 7064 Podhurst Orseck, P.A. – Rafael Cooper Webster
142. 7064 Podhurst Orseck, P.A. – Ralph Pete Hunter
143. 7064 Podhurst Orseck, P.A. – Randy Fuller
144. 7064 Podhurst Orseck, P.A. – Robert Harris
145. 7064 Podhurst Orseck, P.A. – Robert Kratch
146. 7064 Podhurst Orseck, P.A. – Ronald Humphrey
147. 7064 Podhurst Orseck, P.A. – Sean Hill
148. 7064 Podhurst Orseck, P.A. – Steve Smith
149. 7064 Podhurst Orseck, P.A. – Thomas Tapeh
150. 7064 Podhurst Orseck, P.A. – Tommy Barnhardt
151. 7064 Podhurst Orseck, P.A. – Torrance Marshall
152. 7064 Podhurst Orseck, P.A. – Torrin L. Tucker
153. 7064 Podhurst Orseck, P.A. – Tracy Scroggins
154. 7064 Podhurst Orseck, P.A. – Tyrone Rogers
155. 7064 Podhurst Orseck, P.A. – Tyson Thompson
156. 7064 Podhurst Orseck, P.A. – Willie Blade
157. 7065 Pope McGlamry – Robert J. Williams
158. 7081 John D. Giddens P.A. et al. – Perry Lee Dunn
159. 7088 John D. Giddens P.A. et al. – John Di'Giorgio
160. 7091 John D. Giddens P.A. et al. – Kenneth Burrough
161. 7092 John D. Giddens P.A. et al. – Perry Lee Dunn
162. 7094 John D. Giddens P.A. et al. – Perry Lee Dunn
163. 7123 Rose Law Group, pc –David Atkins
164. 7125 Rose Law Group, pc – Demetric Evans
165. 7127 Rose Law Group, pc – Andre Hastings
166. 7129 Rose Law Group, pc –David Johnson
167. 7131 Rose Law Group, pc – Mark Walczak
168. 7133 Zimmerman Reed LLP – Lawrence Sampleton, Jr.
169. 7135 Zimmerman Reed LLP – Orson Mobley
170. 7137 Zimmerman Reed LLP – Kenyon Rasheed
171. 7139 Zimmerman Reed LLP – Judson Flint
172. 7141 Zimmerman Reed LLP – Timothy L. Smyth
173. 7143 Zimmerman Reed LLP – Lance Brown
174. 7145 Zimmerman Reed LLP – Conrad Goode
175. 7147 Zimmerman Reed LLP – Vashone Adams
176. 7152 Rose Law Group, pc – Chris Dugan

177. 7156 John D. Giddens P.A. et al. – Chris Sanders
178. 7159 John D. Giddens P.A. et al. – Gerald Loper
179. 7164 John D. Giddens P.A. et al. – Tobiath Myles
180. 7167 John D. Giddens P.A. et al. – Willie Harper
181. 7170 John D. Giddens P.A. et al. – Patrick Chukwurag
182. 7173 John D. Giddens P.A. et al. – Enoch Demar
183. 7181 John D. Giddens P.A. et al. – Jeffrey Thomason
184. 7184 John D. Giddens P.A. – Leon Seals
185. 7186 Pope McGlamry – Victor Green
186. 7188 Pope McGlamry – Keldrick Dunn
187. 7190 Pope McGlamry – Ken Woodard
188. 7192 Pope McGlamry – Todd Weiner
189. 7194 Pope McGlamry – Joe Walker
190. 7196 Pope McGlamry – Melvin Bratton
191. 7198 Pope McGlamry – Jacob Forb
192. 7200 Pope McGlamry – James Whitley
193. 7202 Pope McGlamry – Nathan Pierce
194. 7207 McCorvey Law, LLC – Sylvester Stamps
195. 7209 McCorvey Law, LLC – Willie Jackson
196. 7211 McCorvey Law, LLC – Henry Dyer
197. 7213 McCorvey Law, LLC – Dexter Carter
198. 7215 McCorvey Law, LLC – Kendel Shello
199. 7217 McCorvey Law, LLC – Reginald Nelson
200. 7219 McCorvey Law, LLC – Gabe Northern
201. 7221 McCorvey Law, LLC – LeShon Johnson
202. 7223 McCorvey Law, LLC – Herman Fontenot
203. 7225 McCorvey Law, LLC – Shawn King
204. 7235 John D. Giddens P.A. et al. – Erik Williams
205. 7242 John D. Giddens P.A. et al. – Mark Smith
206. 7247 Pope McGlamry – Jamie Nails
207. 7249 Pope McGlamry – Elliott Fortune
208. 7251 Pope McGlamry – Michael Bennett
209. 7253 Pope McGlamry – Dana McLemore
210. 7255 Pope McGlamry – Andy Parker
211. 7257 Pope McGlamry – Verron Haynes
212. 7266 Zimmerman Reed LLP – Rickey Dixon
213. 7269 Zimmerman Reed LLP–Floyd Turner, Jr.
214. 7271 Zimmerman Reed LLP–Selwyn Jones
215. 7273 Zimmerman Reed LLP–Robert Jackson, Jr.
216. 7275 Zimmerman Reed LLP–Jeffery Jackson
217. 7278 Zimmerman Reed LLP–David Casper
218. 7280 Zimmerman Reed LLP–Tony Casillas
219. 7284 John D. Giddens P.A. et al. –Clifton Crosby
220. 7291 John D. Giddens P.A. et al. –Richard Bielski
221. 7304 John D. Giddens P.A. et al. –Ollie Smith
222. 7311 John D. Giddens P.A. et al. –Patrick Thomas

223. 7322 John D. Giddens P.A. et al. Chad Fann
224. 7327 Pope McGlamry–Jevon Langford
225. 7329 Pope McGlamry–Calvin Miller
226. 7331 Pope McGlamry–Gerald Willhite
227. 7333 Pope McGlamry–James Runnels, Jr.
228. 7335 Pope McGlamry–Karon Riley
229. 7337 Pope McGlamry–Antonio Langham
230. 7377 David Buckley, PLLC et al. –Kenneth Davis
231. 7379 David Buckley, PLLC et al. –LaDairis Jackson
232. 7381 David Buckley, PLLC et al. –Keith Joseph
233. 7384 David Buckley, PLLC et al. –Kareem Kelly
234. 7386 David Buckley, PLLC et al. –Sultan McCullough
235. 7388 David Buckley, PLLC et al. –David Mims
236. 7390 David Buckley, PLLC et al. –Alvin Harper
237. 7392 David Buckley, PLLC et al. –Jerry Moses
238. 7394 David Buckley, PLLC et al. –Shawntae Spencer
239. 7396 David Buckley, PLLC et al. –Christopher White
240. 7398 David Buckley, PLLC et al. –Spergon Wynn
241. 7410 Hausfeld LLP – RC Owens
242. 7411 Hausfeld LLP – Dennis Harrah
243. 7412 Hausfeld LLP – Tyrone Young
244. 7413 Hausfeld LLP – Darrell Irvin
245. 7414 Hausfeld LLP – Allan Clark
246. 7415 Pope McGlamry –Sedrick Irvin
247. 7422 Smith & Stallworth, P.A. – Christopher Ward
248. 7423 Smith & Stallworth, P.A. –James B. Pruitt
249. 7424 Smith & Stallworth, P.A. –Reginald Myles
250. 7425 Smith & Stallworth, P.A. – Keith Henderson
251. 7426 Smith & Stallworth, P.A. – David Williams
252. 7427 Smith & Stallworth, P.A. – Alonzo Ephriam
253. 7428 Smith & Stallworth, P.A. – Tony George
254. 7429 David Buckley, PLLC et al. –Chris Kemoeatu
255. 7431 David Buckley, PLLC et al. –Ma'ake Kemoeatu
256. 7433 David Buckley, PLLC et al. –Drew Coleman
257. 7435 David Buckley, PLLC et al. –Vernest Ray Alexander
258. 7441 Smith & Stallworth, P.A. –Tyrone Young
259. 7442 Smith & Stallworth, P.A. –Tony George
260. 7447 Smith & Stallworth, P.A. –Lorenzo Hampton
261. 7450 Cummings, McClorey, Davis & Acho, P.L.C. –Levi Johnson
262. 7455 Pope McGlamry –Jeffery Bryant
263. 7461 Pope McGlamry –Thomas McHale
264. 7466 Provost Umphrey Law Firm, L.L.P. –Scott Kellar
265. 7467 Provost Umphrey Law Firm, L.L.P. –LeRoy Irvin, Jr.
266. 7468 Provost Umphrey Law Firm, L.L.P. –Reginald Doss
267. 7483 Goldberg, Persky & White, P.C. –Kevin Devine
268. 7484 Goldberg, Persky & White, P.C. –Robert C. Butler

269. 7485 Goldberg, Persky & White, P.C. –Stacy Dillard
270. 7486 Goldberg, Persky & White, P.C. –Lloyd Harrison
271. 7487 Goldberg, Persky & White, P.C. –Delvic Philyaw
272. 7490 Pope McGlamry –Gerald Perry, Sr.
273. 7494 Farrise Law Firm, P.C. –Vernest Ray Alexander
274. 7495 Farrise Law Firm, P.C. –Abdul Karim Al–Jabbar
275. 7496 Farrise Law Firm, P.C. –Aaron Bailey
276. 7497 Farrise Law Firm, P.C. –Mario Bailey
277. 7498 Farrise Law Firm, P.C. –John Bellamy
278. 7499 Farrise Law Firm, P.C. –Andre Brown
279. 7500 Farrise Law Firm, P.C. – Hillary Butler
280. 7501 Farrise Law Firm, P.C. – Byron Chamberlain
281. 7502 Farrise Law Firm, P.C. – Jess[]e Chatman
282. 7503 Farrise Law Firm, P.C. – Shannon Clavelle
283. 7504 Farrise Law Firm, P.C. – Ronney Daniels
284. 7505 Farrise Law Firm, P.C. – Kirby Dar Dar
285. 7506 Farrise Law Firm, P.C. – Dale Dawkins
286. 7507 Farrise Law Firm, P.C. – Tyronne Drakeford
287. 7508 Farrise Law Firm, P.C. – Joe Fishback
288. 7509 Farrise Law Firm, P.C. – Cory Fleming
289. 7510 Farrise Law Firm, P.C. – Dion Foxx
290. 7511 Farrise Law Firm, P.C. – Willie Gault
291. 7512 Farrise Law Firm, P.C. – Dwayne Goodrich
292. 7513 Farrise Law Firm, P.C. – Alvin Harper
293. 7514 Farrise Law Firm, P.C. – Corey Harris
294. 7515 Farrise Law Firm, P.C. – Travis Henry
295. 7516 Farrise Law Firm, P.C. – Clayton Holmes
296. 7517 Farrise Law Firm, P.C. – Darick Holmes
297. 7518 Farrise Law Firm, P.C. – James Hundon
298. 7519 Farrise Law Firm, P.C. – Lenzie Jackson
299. 7520 Farrise Law Firm, P.C. – Joseph Jefferson
300. 7521 Farrise Law Firm, P.C. – Eric Johnson
301. 7522 Farrise Law Firm, P.C. – Vernon Joines
302. 7523 Farrise Law Firm, P.C. – Brian Jones
303. 7526 Goldberg, Persky & White, P.C. – Bobby E. Abrams, Jr.
304. 7528 Wagstaff & Cartmell, LLP – Miguel Flores
305. 7529 Wagstaff & Cartmell, LLP – Michael Green
306. 7535 Farrise Law Firm, P.C. – Michael Jones
307. 7536 Farrise Law Firm, P.C. – Lamont Jordan
308. 7537 Farrise Law Firm, P.C. – Todd Kelly
309. 7538 Farrise Law Firm, P.C. – Joseph Kent
310. 7539 Farrise Law Firm, P.C. – Shawn King
311. 7540 Farrise Law Firm, P.C. – Clarence Love
312. 7541 Farrise Law Firm, P.C. – Kevin Loville
313. 7542 Farrise Law Firm, P.C. – Anthony Marshall
314. 7543 Farrise Law Firm, P.C. – Terry Mickens

315. 7544 Goldberg, Persky & White, P.C. – Stacey Bailey
316. 7545 Goldberg, Persky & White, P.C. – Rodney Bailey
317. 7546 Goldberg, Persky & White, P.C. – Stefon Adams
318. 7551 Goldberg, Persky & White, P.C. – Carl Bland
319. 7552 Goldberg, Persky & White, P.C. – Brian Blades
320. 7553 Goldberg, Persky & White, P.C. – Keith Bostic
321. 7554 Goldberg, Persky & White, P.C. – Horatio Blades
322. 7558 Goldberg, Persky & White, P.C. – Marty Carter
323. 7559 Goldberg, Persky & White, P.C. – Reginald Brown
324. 7560 Goldberg, Persky & White, P.C. – Raymond Clayborn
325. 7562 Goldberg, Persky & White, P.C. – Matthew Dorsett
326. 7563 Goldberg, Persky & White, P.C. – Kenneth Davidson
327. 7564 Goldberg, Persky & White, P.C. – Gary Dandridge
328. 7565 Goldberg, Persky & White, P.C. – Harvey Clayton
329. 7566 David Buckley, PLLC – Chris M. Johnson
330. 7568 David Buckley, PLLC – Kenneth Davis
331. 7569 David Buckley, PLLC – Alvin Harper
332. 7570 David Buckley, PLLC – LaDairis Jackson
333. 7572 David Buckley, PLLC – Keith Joseph
334. 7574 David Buckley, PLLC – Chris Kemoeatu
335. 7576 David Buckley, PLLC – David Mims
336. 7577 David Buckley, PLLC – Jerry Moses
337. 7579 David Buckley, PLLC – Christopher White
338. 7581 Farrise Law Firm, P.C. – Stanley Pritchett
339. 7582 Farrise Law Firm, P.C. – David Richie
340. 7583 Farrise Law Firm, P.C. – John Ro[d]gers
341. 7584 Farrise Law Firm, P.C. – Sammie Lee Rogers
342. 7586 Farrise Law Firm, P.C. – Irving Spikes
343. 7587 Farrise Law Firm, P.C. – Travis Stephens
344. 7588 Farrise Law Firm, P.C. – Lemuel Stinson
345. 7589 Farrise Law Firm, P.C. – Barron Tanner
346. 7590 Farrise Law Firm, P.C. – Gregory Townsend
347. 7591 Farrise Law Firm, P.C. – Lamont Warren
348. 7592 Farrise Law Firm, P.C. – Erik Williams
349. 7593 Farrise Law Firm, P.C. – Scott Tinsley
350. 7598 Goldberg, Persky & White, P.C. – Antonio Gibson
351. 7599 Goldberg, Persky & White, P.C. – Percell Gaskins
352. 7600 Goldberg, Persky & White, P.C. – Keith Ferguson
353. 7601 Goldberg, Persky & White, P.C. – Gregory Evans
354. 7602 Goldberg, Persky & White, P.C. – Talman Gardner
355. 7609 Farrise Law Firm, P.C. – Derrick Rodgers
356. 7610 Farrise Law Firm, P.C. – James H. Brown
357. 7611 Farrise Law Firm, P.C. – James B. Pruitt
358. 7612 Farrise Law Firm, P.C. – Derrick Fenner
359. 7613 Farrise Law Firm, P.C. – Carl Pickens
360. 7614 Farrise Law Firm, P.C. – Mike Sherrard

361. 7616 Pope McGlamry – Karsten Bailey
362. 7618 Pope McGlamry – Joe Burns
363. 7620 Farrise Law Firm, P.C. – Dameane Douglas
364. 7631 John D. Giddens P.A. – Clarence Love
365. 7634 John D. Giddens P.A. – Duval Love
366. 7638 John D. Giddens P.A. – David Boston
367. 7641 John D. Giddens P.A. – Jocelyn Borgella
368. 7644 John D. Giddens P.A. – Dermontti Dawson
369. 7647 John D. Giddens P.A. – Ronald Dixon
370. 7650 John D. Giddens P.A. – Marcus Dupree
371. 7653 John D. Giddens P.A. – Tommie Funchess
372. 7656 John D. Giddens P.A. – Winfield Garnett, III
373. 7659 John D. Giddens P.A. – DeLawrence Grant, Jr.
374. 7662 John D. Giddens P.A. – Van Jakes
375. 7665 John D. Giddens P.A. – Jimmie Kennedy
376. 7668 John D. Giddens P.A. – Stacey Mack
377. 7671 John D. Giddens P.A. – Dexter McCleon
378. 7675 John D. Giddens P.A. – Audray McMillian
379. 7678 John D. Giddens P.A. – Jeff Moore
380. 7681 John D. Giddens P.A. – Lloyd Mumphord
381. 7685 John D. Giddens P.A. – Elex Price, Sr.
382. 7688 John D. Giddens P.A. – Archie Reese
383. 7690 John D. Giddens P.A. – Dwayne Rudd
384. 7693 John D. Giddens P.A. – Taveres T.J. Slaughter
385. 7696 John D. Giddens P.A. – Rayna Stewart
386. 7698 John D. Giddens P.A. – Timothy Walton
387. 7701 John D. Giddens P.A. – Sammy Williams
388. 7704 John D. Giddens P.A. – Maury Youmans
389. 7717 John D. Giddens P.A. – LeMar Parrish
390. 7720 John D. Giddens P.A. – John Sanders
391. 7723 John D. Giddens P.A. – Jonathan Staggers
392. 7726 John D. Giddens P.A. – David Windham
393. 7729 John D. Giddens P.A. – Michael Blazitz
394. 7732 John D. Giddens P.A. – Doug Chapman
395. 7735 Pope McGlamry – Robert E. Johnson, Jr.
396. 7741 John D. Giddens P.A. – Frank Middleton
397. 7743 John D. Giddens P.A. – Victor Hobson
398. 7746 John D. Giddens P.A. – Brian Holloway
399. 7749 John D. Giddens P.A. – Gerald E. Jackson
400. 7752 John D. Giddens P.A. – Joe Johnson
401. 7755 John D. Giddens P.A. – Tony Nathan
402. 7758 John D. Giddens P.A. – Tori Noel
403. 7766 Neurocognitive Football Lawyers, PLLC – Adam Schreiber
404. 7770 Pope McGlamry – Randall Godfrey
405. 7773 Goldberg, Persky & White, P.C. – Reginald Gipson
406. 7774 Goldberg, Persky & White, P.C. – Cornell Gowdy

407. 7775 Goldberg, Persky & White, P.C. – Lorenzo Hampton
408. 7778 Farrise Law Firm, P.C. – Ulys Thompson
409. 7781 Smith & Stallworth, P.A. – Basil Proctor
410. 7783 John D. Giddens P.A. – Glenn Derby
411. 7786 John D. Giddens P.A. – Paul Ernster
412. 7789 John D. Giddens P.A. – Todd McArthur
413. 7792 John D. Giddens P.A. – John Niland
414. 7794 John D. Giddens P.A. – Jethro Pugh, Jr.
415. 7797 John D. Giddens P.A. – David Recher
416. 7826 Edward Stone Law P.C. – Eric Curry
417. 7828 Dugan Law Firm, APLC – Warren Capone
418. 7829 Dugan Law Firm, APLC – David Gagnon
419. 7831 John D. Giddens P.A. – Destry Wright
420. 7835 John D. Giddens P.A. – Ricky Patton
421. 7838 Provost Umphrey Law Firm, L.L.P. – Steve Warren
422. 7841 John D. Giddens P.A. – Steve Gage
423. 7854 Dugan Law Firm, APLC – Michael Bell
424. 7855 Dugan Law Firm, APLC – Thomas Clapp
425. 7856 Dugan Law Firm, APLC – Keaton Cromartie
426. 7857 Dugan Law Firm, APLC – Jacob Cutrera
427. 7858 Dugan Law Firm, APLC – James Gueno
428. 7859 Mokaram & Associates, PC – Upton Williams
429. 7860 Mokaram & Associates, PC – Connell Spain
430. 7861 Mokaram & Associates, PC – Kevin Smith
431. 7862 Mokaram & Associates, PC – Kelvin Smith
432. 7863 Mokaram & Associates, PC – Michael Hicks
433. 7864 Mokaram & Associates, PC – Romby Bryant
434. 7865 Mokaram & Associates, PC – Sperguson Wynn
435. 7866 Mokaram & Associates, PC – Shawntae Spencer
436. 7867 Mokaram & Associates, PC – Sultan McCullough
437. 7868 Mokaram & Associates, PC – Kareem Kelly
438. 7873 Dugan Law Firm, APLC – Raion Hill
439. 7879 Dugan Law Firm, APLC – Norman Hodgins, Jr.
440. 7881 Weisberg & Associatas, PA – James H. Brown
441. 7882 Weisberg & Associatas, PA – John Rodgers
442. 7883 Weisberg & Associatas, PA – Kirby Dar Dar
443. 7884 Weisberg & Associatas, PA – Lamont Warren
444. 7885 Weisberg & Associatas, PA – Mario Bailey
445. 7886 Weisberg & Associatas, PA – Travis Minor
446. 7888 Mokaram & Associates, PC – Pierre Walters
447. 7890 David Buckley, PLLC – Correll Buckhalter
448. 7892 John D. Giddens P.A. – Odie Harris
449. 7895 Dugan Law Firm, APLC – Tommy Gay
450. 7896 Dugan Law Firm, APLC – Jason Gesser
451. 7897 Dugan Law Firm, APLC – Marshall Goldberg
452. 7898 Dugan Law Firm, APLC – Darrien Johnson

453. 7899 Dugan Law Firm, APLC – Jimmy Keyes
454. 7900 Dugan Law Firm, APLC – Odell Lawson, Sr.
455. 7901 Dugan Law Firm, APLC – Mike Levenseller
456. 7902 Dugan Law Firm, APLC – Brit Miller
457. 7903 Dugan Law Firm, APLC – Karl Morgan
458. 7904 Dugan Law Firm, APLC – Kerry Parker
459. 7905 Dugan Law Firm, APLC – Kurt Schultz
460. 7906 Dugan Law Firm, APLC – Frank Staine–Pyne
461. 7907 Dugan Law Firm, APLC – Joseph Williams
462. 7908 Dugan Law Firm, APLC – Walter Young
463. 7925 Robins Cloud, LLP – Narond Alexander
464. 7927 Robins Cloud, LLP – Cory Fleming
465. 7929 Robins Cloud, LLP – Issac Davis
466. 7931 Robins Cloud, LLP – Lamont Green
467. 7933 Robins Cloud, LLP – Raymond Green
468. 7935 Robins Cloud, LLP – Ken Hamlin
469. 7937 Robins Cloud, LLP – Ronney Jenkins
470. 7939 Robins Cloud, LLP – Christopher Wells
471. 7941 Robins Cloud, LLP – Julius Williams
472. 7944 Dugan Law Firm, APLC – Clint Harris
473. 7950 Dugan Law Firm, APLC – Roy Foster
474. 7951 Dugan Law Firm, APLC – William Hampton
475. 7952 Dugan Law Firm, APLC – Dennis Johnson
476. 7953 Dugan Law Firm, APLC – Richard Mauti
477. 7954 Dugan Law Firm, APLC – Ronald McKinnon
478. 7955 Dugan Law Firm, APLC – Tyrone Rush
479. 7956 Dugan Law Firm, APLC – Sean Smith
480. 7957 Dugan Law Firm, APLC – Christopher Thompson
481. 7958 Dugan Law Firm, APLC – Louis Williams
482. 7959 Pope McGlamry – Mijoshki Evans
483. 7961 Pope McGlamry – D. Kris Haines
484. 7964 Pope McGlamry – Kevin N. House, Sr.
485. 7967 Pope McGlamry – Jeremiah Castille
486. 7969 Pope McGlamry – Solomon Miller
487. 7971 Pope McGlamry – Fernando Smith
488. 8034 John D. Giddens P.A. – Henry Rhodes
489. 8039 Farrise Law Firm, P.C. – Wilson Bryant
490. 8040 Farrise Law Firm, P.C. – Joseph Redmond
491. 8048 McCorvey Law, LLC – Errict Rhett
492. 8050 David Buckley, PLLC – Brodney Pool
493. 8051 David Buckley, PLLC – Ricky Price
494. 8052 David Buckley, PLLC – Kevin Payne
495. 8053 David Buckley, PLLC – Brian Schaefering
496. 8058 Mokaram & Associates, PC – Jake Ballard
497. 8059 Mokaram & Associates, PC – Joshua Booty
498. 8060 Mokaram & Associates, PC – Plaxico Burrese

499. 8061 Mokaram & Associates, PC – Sergio Jackson
500. 8062 Mokaram & Associates, PC – Ronald McClendon
501. 8063 Mokaram & Associates, PC – Reggie McNeal
502. 8064 Mokaram & Associates, PC – Edell Shepherd
503. 8073 Goldberg, Persky & White, P.C. Keith Henderson
504. 8077 Pope McGlamry – Daniel Clark IV
505. 8079 Pope McGlamry – Ronald L. Singleton
506. 8081 Goldberg, Persky & White, P.C. – Patrick Hunter
507. 8082 Pope McGlamry – Jerry Porter
508. 8084 Goldberg, Persky & White, P.C. – Ronney Jenkins
509. 8085 Goldberg, Persky & White, P.C. – Derek Kennard
510. 8087 Weisberg & Associatas, PA – Le’Ron McClain
511. 8088 Pope McGlamry – Michael Johnson
512. 8090 Pope McGlamry – Kiwaukee S. Thomas
513. 8091 Locks Law Firm – Keith Hamiton
514. 8093 Locks Law Firm – Eric Wright
515. 8094 Locks Law Firm – Bruce Taylor
516. 8095 Locks Law Firm – Andrew Jordan, Jr.
517. 8096 Locks Law Firm – Glenn L. Collins
518. 8097 Locks Law Firm – Ricky Nattiel
519. 8098 Locks Law Firm – Rod Davis
520. 8099 Locks Law Firm – Ronnie Ghent
521. 8100 Pope McGlamry – Julius Williams
522. 8110 Anapol Weiss – Eric T. Scoggins
523. 8111 Locks Law Firm – Reese McCall, Jr.
524. 8112 Locks Law Firm – Lawrence Watkins
525. 8113 Locks Law Firm – Marc Lillibridge
526. 8114 Locks Law Firm – Felix Wright
527. 8115 Locks Law Firm – Glen E. Young
528. 8116 Locks Law Firm – Steven DeBerg
529. 8117 Locks Law Firm – Charlie McShane
530. 8118 Locks Law Firm – Michael L. Haddix
531. 8119 Locks Law Firm – Todd Howard
532. 8120 Locks Law Firm – Roland Harper
533. 8121 Locks Law Firm – Stacey Simmons
534. 8122 Locks Law Firm – Jon Michael Reichenbach
535. 8123 Locks Law Firm – Jackie A. Walker
536. 8124 Locks Law Firm – Frank Hartley
537. 8125 Locks Law Firm – David Greenwood
538. 8126 Locks Law Firm – Darrel Earl Jones
539. 8127 Locks Law Firm – Clifton Smith, II
540. 8128 Locks Law Firm – Michael C. Williams
541. 8131 Locks Law Firm – Jorge A. Diaz
542. 8134 Driscoll Firm, P.C. – Jerry Crafts
543. 8136 Anapol Weiss Eric Hilgenberg
544. 8157 Dugan Law Firm, APLC – Atlas Herrion

545. 8160 Goldberg, Persky & White, P.C. – Emanuel King
546. 8161 Goldberg, Persky & White, P.C. – Henry Lawrence
547. 8172 Locks Law Firm – Santo S. Stephens
548. 8173 Locks Law Firm – Demetric Evans
549. 8174 Locks Law Firm – Billy Davis
550. 8175 Locks Law Firm – Gregory Lewis
551. 8176 Locks Law Firm – Joey Hollenbeck
552. 8177 Locks Law Firm – Sherman Cocroft
553. 8178 Locks Law Firm – Billy Joe Hobert
554. 8179 Locks Law Firm – Mark McGrath
555. 8180 Locks Law Firm – Chad Fann
556. 8181 Locks Law Firm – David Diaz–Infante
557. 8182 Locks Law Firm – Cornelius Anthony
558. 8183 Locks Law Firm – Gregory L. Bracelin
559. 8184 Locks Law Firm – Gregory Randall
560. 8185 Locks Law Firm – Jerald Moore
561. 8186 Locks Law Firm – Carl Miller
562. 8187 Locks Law Firm – Robert Hewko
563. 8188 Locks Law Firm – Sedric Clark
564. 8189 Locks Law Firm – Roger Jackson
565. 8193 Dugan Law Firm, APLC – Maurice Hurst
566. 8214 Robins Cloud, LLP – Claude Wroten
567. 8233 Locks Law Firm – Tony Smith
568. 8239 Hodgins Law Group, LLC – Eugene Sykes
569. 8240 Hodgins Law Group, LLC – Alden Roche, Jr.
570. 8241 Hodgins Law Group, LLC – Robert Sanders
571. 8242 Hodgins Law Group, LLC – Ronnie Heard
572. 8243 Hodgins Law Group, LLC – Christopher Thompson
573. 8251 Smith & Stallworth, P.A. – Elbert Woods
574. 8254 Locks Law Firm – Anthony Smith
575. 8255 Locks Law Firm – Ken Walter
576. 8256 Locks Law Firm – Jeffery Fuller
577. 8257 Locks Law Firm – Chad Eaton
578. 8258 Locks Law Firm – Derrick Burroughs
579. 8259 Hodgins Law Group, LLC – Matthew Dorsett
580. 8260 Hodgins Law Group, LLC – Corey Dowden
581. 8264 Goldberg, Persky & White, P.C. – Kevin McLeod
582. 8265 Goldberg, Persky & White, P.C. – Eric Martin
583. 8266 Goldberg, Persky & White, P.C. – Corey Mayfield
584. 8271 Zimmerman Reed LLP – Robert Massey
585. 8273 Zimmerman Reed LLP – Calvin Sweeney
586. 8275 Zimmerman Reed LLP – Levar Fisher
587. 8277 Zimmerman Reed LLP – Marquette Smith
588. 8279 Zimmerman Reed LLP – Ralph Kurek
589. 8281 Zimmerman Reed LLP – Richard Cunningham
590. 8283 Steckler Gresham Cochran PLLC – Tim Morabito

591. 8284 Steckler Gresham Cochran PLLC – Robert James
592. 8287 Pope McGlamry – Darrion Scott
593. 8289 Pope McGlamry – William Dozier III
594. 8291 Pope McGlamry – Donald Lee Evans
595. 8293 Pope McGlamry – Alpette Richardson
596. 8295 Locks Law Firm – Walt Harris
597. 8296 Locks Law Firm – Char–Ron Dorsey
598. 8297 Locks Law Firm – Elgin Davis
599. 8298 Locks Law Firm – Renaldo Wynn
600. 8299 Driscoll Firm, P.C. – Larry Gillard
601. 8300 Driscoll Firm, P.C. – Roscoe Parrish
602. 8304 John D. Giddens P.A. – Edward Thomas
603. 8326 Dugan Law Firm, APLC – Dennis Johnson
604. 8331 Pope McGlamry – Bernard Eric Green
605. 8333 Farrise Law Firm, P.C. – Steve Wilson
606. 8349 Dugan Law Firm, APLC – Curtis Baham
607. 8374 Kreindler & Kreindler LLP – James Boyd
608. 8384 Provost Umphrey Law Firm, L.L.P. – Robert D. Bean
609. 8388 Robins Cloud, LLP – John Nix
610. 8390 Robins Cloud, LLP – John Nix
611. 8399 Locks Law Firm – Joe T. Owens
612. 8400 Kreindler & Kreindler LLP – Dameane Douglas
613. 8401 Kreindler & Kreindler LLP – John E. Harris
614. 8412 Locks Law Firm – Kory Blackwell
615. 8413 Locks Law Firm –Gregory Brown
616. 8414 Locks Law Firm –Christopher Coleman
617. 8415 Locks Law Firm –Kenard Lang
618. 8416 Locks Law Firm –Rod Manuel
619. 8417 Locks Law Firm –Rodrick Rutledge
620. 8418 Locks Law Firm –Hurley J. Tarver, Jr.
621. 8419 Locks Law Firm –Rodney Bellinger
622. 8420 Locks Law Firm –Reggie Berry
623. 8421 Locks Law Firm –James Betterson
624. 8422 Locks Law Firm –Doug Donley
625. 8423 Locks Law Firm –Steven Hamilton
626. 8424 Locks Law Firm –Seth Joyner
627. 8425 Locks Law Firm –George W. McCullough, Jr.
628. 8426 Locks Law Firm –Frederick Nixon
629. 8427 Locks Law Firm –Mark Seay
630. 8428 Locks Law Firm –Reginald Sutton
631. 8429 Locks Law Firm –Zachary Valentine
632. 8453 John D. Giddens P.A. et al. –Nate Lewis
633. 8467 Farrise Law Firm, P.C. –Ronney Daniels
634. 8468 Farrise Law Firm, P.C. –Shawn King
635. 8469 Farrise Law Firm, P.C. –Cory Fleming
636. 8471 Farrise Law Firm, P.C. –Joseph Redmond

- 637. 8818 Farrise Law Firm, P.C. –Robert Wilson
- 638. 8911–1 McCorvey Law, LLC et al. –Clifton Smith, Jr.
- 639. 8921–1 Robins Cloud, LLP – Henry Lusk
- 640. 8922–1 Robins Cloud, LLP – Antonio Pittman

EXHIBIT B



LOCKS LAW FIRM

The Curtis Center
601 Walnut Street, Suite 720 East
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106
T 215.893.0100
T 866.LOCKSLAW
F 215.893.3444
lockslaw.com

GENE LOCKS
glocks@lockslaw.com
215-893-3434

November 2, 2017

Professor William B. Rubenstein
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138

Dear Professor Rubenstein:

I am Class Counsel in the NFL MDL Settlement Class and have worked with Tobias Wolff, a professor at the University of Pennsylvania Law School. My firm filed two documents before Judge Brody, both of which address matters the Court has assigned to you for an expert opinion. One of those documents, our January, 2017 response to the Motion of the Estate of Kevin Turner, filed jointly with Professor Wolff, addresses issues related to individual fee contracts.

The second document is my recently filed Declaration of October 27, 2017. At pages 22-30, I address the NFL five percent set aside issue, a matter of which co-lead counsel Chris Seeger, took a position in his Declarations of February 13, 2017 and October 10, 2017 attached hereto.

To be certain you have these filings, I have taken the liberty of enclosing them with this letter.

I am available to meet and discuss these matters if you are so inclined.

Thank you for your consideration.

Very truly yours,

Gene Locks

GL:pat
Enclosures
Cc: Prof. Tobias Barrington Wolff (w/o enclosures)
Christopher Seeger, Esquire (w/o enclosures)
Sol Weiss, Esquire (w/o enclosures)
Steven C. Marks, Esquire (w/o enclosures)

EXHIBIT C

In re National Football League Players' Concussion Injury Litigation
MDL No. 2323
Expert Declaration of William B. Rubenstein

EXHIBIT C
Class Counsel's Fee Request in Percentage Terms

CLASS COUNSEL'S PERCENTAGE CALCULATION

1	Monetary Award Fund (MAF)	\$950,000,000
2	Baseline Assessment Program (BAP)	\$75,000,000
3	Education Fund	\$10,000,000
4	Notice Costs	\$4,000,000
5	Claims Administration	\$11,925,000
6	Attorney's Fees Provision	\$112,500,000
7	TOTAL	\$1,163,425,000

This Table appears in Class Counsel's fee petition.¹

Class Counsel's fee and expenses request at line 6 (\$112,500,000) is 9.67% of Class Counsel's total settlement value at line 7 (\$1,163,425,000).

¹ . ECF No. 7151-1 at 45.

NET PRESENT VALUE PERCENTAGE CALCULATION

1	Monetary Award Fund (MAF)	\$537,000,000
2	Baseline Assessment Program (BAP)	\$51,000,000
3	Education Fund	\$10,000,000
4	Notice Costs	\$4,000,000
5	Claims Administration	\$6,000,000
6	Attorney's Fees Provision	\$112,500,000
7	TOTAL	\$720,500,000

The net present value of the MAF, BAP, and Claims Administration are found in the NFL's actuarial analysis as the mean of the range of confidence interval.² The PSC's expert uses very similar – albeit lower – numbers.³ Although these reports were submitted to the mediator in support of the original capped settlement fund, the parties insist that they remain pertinent and both the parties and the Court have subsequently relied on them.⁴

Class Counsel's fee and expenses request at line 6 (\$112,500,000) is 15.61% of the net present value of the settlement at line 7 (\$720,500,000).

² ECF No. 6168 at 51.

³ ECF No. 6167 at 50 (reporting net present value of MAF as \$519.4 million).

⁴ *See, e.g.*, ECF No. 6509 at 32-33 (Court's final approval order); ECF No. 7151-1 at 45 (Class Counsel's fee brief).

EXHIBIT D

In re National Football League Players' Concussion Injury Litigation
MDL No. 2323
Expert Declaration of William B. Rubenstein

EXHIBIT D
IRPA Rates in Fee Cap Cases

CASES WITH TOTAL FEE CAPS

Ref. #	Case	Total Fee Cap	Effective IRPA Rate
1	<i>Zyprexa</i> (large claims)	35%	33.5%
2	<i>MGM Grand</i>	33.33%	24.83%
3	<i>Vioxx</i>	32%	24.5%
4	<i>Guidant</i>	37.18%	22.8%
5	<i>Zyprexa</i> (small claims)	20%	18.5%
6	<i>Bayou Sorrel</i>	36%	18%
	AVERAGE	32.25%	23.69%

1. *In re Zyprexa Prods. Liab. Litig.*, 424 F. Supp. 2d 488, 491 (E.D.N.Y. 2006) (instituting adjustable 35% fee cap); *In re Zyprexa Prod. Liab. Litig.*, No. MDL NO. 1596 JBW RLM, 2007 WL 2340790, at *1 (E.D.N.Y. Aug. 17, 2007) (describing 3% set-aside of the gross recovery to pay into the common benefit fund to be paid “½ (1.5%) from the plaintiff’s share of the gross recovery and ½ (1.5%) from the attorney fee portion of the gross recovery”). The 35% cap minus the 1.5% IRPA contribution to the common benefit fund yields an effective IRPA fee of 33.5%.
2. *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522 (D. Nev. 1987) (instituting 33.33% cap, granting 7% in fees to steering committee and stating that would leave 26.33% to IRPAs, but also requiring IRPAs to pay 1.5% in common benefit expenses).
3. *In re Vioxx Prod. Liab. Litig.*, 760 F. Supp. 2d 640, 653, 658 (E.D. La. 2010) (instituting 32% cap, granting 6.5% in fees to steering committee and stating that would leave IRPAs “over 25%,” but also requiring IRPAs to pay 1% in common benefit expenses).
4. *In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No. MDL 05-1708 DWF/AJB, 2008 WL 3896006 (D. Minn. Aug. 21, 2008) (adjusting fee cap to 37.18% and adopting complex formula for IRPA fee but effectively setting that amount at about 22.8% of gross recovery).
5. *In re Zyprexa*, 424 F. Supp. 2d at 491 (instituting 20% fee cap – and \$500 expense cap – for smaller \$5,000 claims); *In re Zyprexa*, 2007 WL 2340790, at *1 (as above, granting steering committee 3%, half of which (1.5%) to be paid by the IRPAs). The 20% cap minus the 1.5% IRPA contribution yields an effective IRPA fee of 18.5%.
6. *In re Bayou Sorrel Class Action*, No. 04-1101, 2006 WL 3230771 (W.D. La. Oct. 31, 2006) (setting fees at “36% for all plaintiff’s attorneys, 50% of which is to be distributed to the PSC for the common benefit work and 50% to the various private attorneys representing individual plaintiffs,” yielding 18% IRPA rate).

CASES WITH DIRECT IRPA CAPS

Ref. #	Case	IRPA Rate
1	<i>Medtronic</i>	33.33%
2	<i>Deepwater Horizon</i>	25%
3	<i>Joint E&S Asbestos</i>	25%
4	<i>Evans v. TIN</i>	20%
5	<i>Copley</i>	11%
6	<i>Beverly Hills Fire</i>	6.3%
7	<i>Rio Hair Naturalizer</i>	5%
	AVERAGE	17.95%

1. *In re Medtronic, Inc. Implantable Defibrillator Prod. Liab. Litig.*, No. CIV 05MD1726 JMR/AJB, 2008 WL 4861693 (D. Minn. Nov. 10, 2008) (holding that “retained counsel’s fee may not exceed 33 1/3 percent of the gross award allocated to the client”).
2. *In re Oil Spill by the Oil Rig DEEPWATER HORIZON in the Gulf of Mexico*, on Apr. 20, 2010, No. 12-968, 2012 WL 2236737 (E.D. La. June 15, 2012) (“The Court orders that contingent fee arrangements for all attorneys representing claimants/plaintiffs that settle claims through either or both of the Settlements will be capped at 25% plus reasonable costs.”).
3. *In re Joint E&S Dist. Asbestos Litigation*, 878 F. Supp. 473 (E.& S.D.N.Y. 1995) (noting that “the contingency fee percentage was raised to a compromise figure of 25%, which the Courts approved as ‘reasonable’”).
4. *Evans v. TIN, Inc.*, No. CIV.A. 11- 2182, 2013 WL 4501061 (E.D. La. Aug. 21, 2013) (holding that “privately retained attorney’s fees should be limited to 20% of any individual claimant’s recovery,” net of the steering committee’s 25.89% fee).
5. *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1417 (D. Wy. 1998) (assuming a “standard contingency fee [of] 33%” and reducing most “private attorney contingency fees . . . by two thirds (leaving the private attorneys with one third) to reflect the common benefit services provided by class counsel” meaning that IRPAs yielded a third of 33% or 11%).
6. *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915, 925 (E.D. Ky. 1986) (“[A]ll attorneys, not members of the PLCC, may charge their clients a fee not to exceed a sum equal to 6.3% of the net final distribution payable to the individual plaintiffs. . .”) (footnote omitted).
7. *In re Rio Hair Naturalizer Prod. Liab. Litig.*, No. MDL 1055, 1996 WL 780512 (E.D. Mich. Dec. 20, 1996) (“[T]he individual attorneys in this case may collect from their clients no more than 5% of their individual clients’ recoveries as contingency fees.”).

EXHIBIT E

In re National Football League Players' Concussion Injury Litigation
MDL No. 2323
Expert Declaration of William B. Rubenstein

EXHIBIT E
Analysis of Work Necessary to Maintain Settlement

	TASK¹	LAUNCH or MAINTAIN
1	Drafting and dissemination of Supplemental Notices.	This work is described as related to ensuring full registration. It is therefore largely completed.
2	Implementation Paperwork and Retention of Key Officers	This work is described in the past tense and is completed.
3	Work to Ensure Class-Member-Friendly Registration and Claims Processes	This work is described in the past tense and is completed.
4	Efforts to Widely Spread Information to Class Members	This work was geared toward ensuring registration, is described in the past tense, and is completed.
5	Efforts to Combat the Dissemination of Misinformation to Class Members	This work is largely described in the past tense. Such work may recur in the future, but since the registration period has ended, it should decline.
6	Selection of Advisory Panel Members and Appeals Advisory Panel Consultants	This work is completed. While these panels will have to be re-staffed over time, all future work on this effort appears in point 11 below.
7	Selection and Orientation of Hundreds of Individuals to Serve as Qualified BAP Providers and Qualified MAF Physicians and Maintenance of These Physician Networks	This work is completed. While these panels will have to be re-staffed over time, all future work on this effort appears in point 11 below.
8	Participation on Class Members' Behalf in the Appeals Process	Most of this work will be done after the settlement is launched but it is unlikely to require a significant time commitment, particularly given that 50% of the registrants have their own counsel.
9	Monitoring the NFL Parties' Funding of and Targeted Reserves for the Settlement	Most of this work will be done after the settlement is launched but it is likely to require almost no time commitment. Indeed, the Court could eliminate this point altogether simply by requiring the NFL to report directly to it that it was meeting the required funding deadlines.
10	Establishing Procedures for and Participation in Periodic Audits of All Aspects of the Program, Including Medical Providers and Administrators	Most of this work will be done after the settlement is launched but it is unlikely to require significant time commitment. The Settlement Agreement also states that Co-Lead Counsel will bear this cost themselves. ²
11	Replacing the Qualified BAP Providers and Qualified MAF Physicians, Appeals Advisory Panel Members, and Appeals Advisory Panel Consultants	This point is the analogue of points 6 and 7, above, and does identify future work.
12	Revisiting of the Science Every Ten Years	This work will have to be done once every ten years

¹ For Class Counsel's enumeration and description of these 12 specific tasks, see ECF No. 7464 at 36-44.

² ECF No. 6481-1 at 59.

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

**RECEIPT OF EXPERT'S REPORT
AND NOTICE**

By Order dated September 14, 2017 (ECF No. 8376), the Court appointed Professor William B. Rubenstein as an expert witness on attorneys' fees and asked Professor Rubenstein to submit a report on two sets of issues. Professor Rubenstein has submitted his expert report to the Court and the Court has posted it on ECF.

In appointing Professor Rubenstein, the Court noted that all interested parties would have an opportunity to respond to his report pursuant to the discretionary deposition process set forth in Fed. R. Evid. 706(b)(2). Professor Rubenstein's 47-page report is sufficiently comprehensive and detailed that I have decided that it will be most helpful to the Court and most efficient for the fee process to have interested parties simply respond in writing to Professor Rubenstein's opinions.

Accordingly, all interested parties may file briefs, limited to 10 pages in length, in response to Professor Rubenstein's expert report and the opinions offered therein **on or before**

Wednesday, January 3, 2018. Professor Rubenstein shall be entitled to file a reply to these comments on his Report **on or before Monday, January 22, 2018.**

12/11/2017

s/Anita B. Brody

DATE

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION <hr style="width: 40%; margin-left: 0;"/> THIS DOCUMENT RELATES TO: ALL ACTIONS	§ § § § § § § § § §	No. 12-md-2323 (AB) MDL No. 2323
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------	---------------------------------------------------------------------------------------

**Motion to Reconsider Withdrawing Fed. R. Evid. 706 Deposition
And
Motion for Extension of Time to Respond to the
Expert Report of Professor William B. Rubenstein**

Come now, The Alexander Objectors, Lubel Voyles, LLP, and Provost Umphrey Law Firm LLP (collectively, “Movants) and file this their motion, along with accompanying memorandum in support, asking the Court to reconsider the Court’s Order (ECF 9527) withdrawing the Court’s previously ordered deposition of expert appointed pursuant to Fed. R. Civ. P. 706 and to extend their time to file a response to the report and opinions of Professor William B. Rubenstein.

By this motion and the accompanying memorandum in support, Movants respectfully request that this Court (a) extend their time to respond to the Expert Report of Professor William B. Rubenstein by sixty days (up to and including March 7, 2018 and (b) establish a date and protocol for interested parties to take a limited deposition of Professor William B. Rubenstein *before* such responsive filings are due.

PRAYER

For the reasons set forth herein, and in their memorandum in support, Movants ask the Court to:

(a) extend their time to respond to the Expert Report of Professor William B. Rubenstein by sixty days (up to and including March 7, 2018); and

(b) establish a date and protocol for interested parties to take a limited deposition of Professor William B. Rubenstein *before* such responsive filings are due.

Date: December 19, 2017

Respectfully Submitted,

Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES, PLLC
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (832) 977-9136
Facsimile: (832) 714-0314
Email: ccanady@canadylawfirm.com

/s/ Lance H. Lubel
Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman
Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

Attorneys for Melvin Aldridge, Trevor Cobb, Jerry W. Davis, Michael Dumas, Corris Ervin, Robert Evans, Anthony Guillory, Wilmer K. Hicks, Jr., Richard Johnson, Ryan McCoy, Emanuel McNeil, Robert Pollard, Frankie Smith, Tyrone Smith, James A. Young Sr., and Baldwin Malcom Frank

Respectfully Submitted,

/s/ Matthew C. Matheny

Matthew C. Matheny
Texas State Bar No. 24039040
mmatheny@pulf.com
Jacqueline Ryall
jryall@pulf.com
PROVOST UMPHREY
LAW FIRM, L.L.P.
Attorney at Law
Post Office Box 4905
Beaumont, Texas 77704
(409) 835-6000
(409) 838-8888 - Fax Number

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on December 19, 2017.

/s/ Lance H. Lubel

Lance H. Lubel

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner, et al.,
Plaintiffs,

Civ. Action No. 14-00029-AB

V.

National Football League, et al.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**RESPONSE OF THE LOCKS LAW FIRM TO
THE EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

Pursuant to the December 11, 2017 Order of the Court, Class Counsel The Locks Law Firm (LLF), through its attorney Professor Tobias Barrington Wolff, respectfully submits this response to the December 3, 2017 Expert Report of Professor William B. Rubenstein on the issue of attorney's fees.

Introduction

Professor Rubenstein has provided a thorough analysis, and LLF endorses some of his conclusions. LLF respectfully submits, however, that the Expert Report also relies on some unfounded assumptions, and the firm requests discrete modifications to its recommendations. In summary:

- LLF accepts Professor Rubenstein's recommendation on the issue of the proposed 5% set-aside. It is an improper monetary burden on the class.

- LLF accepts the reduction from 20% to 15% on its contractual contingency fee for former players whom the firm began representing after the date of preliminary approval and who do not file a pre-effective date claim, and also for former players who proceed through the Baseline Assessment Program (BAP).

- LLF requests, however, that its 20% contractual contingency fee be respected for clients whom it began representing before preliminary approval of the settlement and who sought a diagnosis through independent medical experts rather than through the BAP. For these higher-risk and more resource-intensive clients, LLF respectfully submits that a 20% contingency fee is fully justified.

LLF bases its request on the following propositions, which the firm asks that Professor Rubenstein and the Court consider when determining whether to adjust the recommendations in the Report:

- The Court's requirement that the settlement remain uncapped (a defining feature of the agreement) and the separate course of negotiations surrounding the common-benefit fees together contradict Professor Rubenstein's treatment of those fees as a tax on the recovery of each individual claimant.

- The Expert Report errs when it relies on out-of-date actuarial figures to estimate the total recovery under the settlement. Those figures are no longer current or reliable. If the total recovery for the class will have any bearing on individual contingency fees — which it should not in this case — then that figure should be projected using actual data, which are now becoming available.

- The NFL's actions have magnified by several-fold the amount of work required to advance a claim. The NFL delays, opposes, or appeals the majority of claims and awards, such that competent counsel is now vital to player recovery.

Following preliminary approval of the Settlement in 2014, LLF voluntarily reduced its contingency fees in individual contracts from 33% to 20%. In light of Professor Rubenstein's recommendations, the firm accepts a further reduction to 15% for the lower-risk, lower-effort claims identified above. But the Expert Report does not support a further reduction for clients whom the firm began representing

before preliminary approval of the Settlement and who sought a diagnosis through independent medical experts rather than through the BAP. As to those claimants, LLF respectfully requests that its contract fees of 20% be confirmed.

**The Uncapped Nature of the Settlement Contradicts
Professor Rubenstein's Treatment of the Common-Benefit Fees**

Months before the Court's decision to uncapped the Settlement, the NFL and Class Counsel negotiated the \$112.5 million figure for common-benefit fees separate and apart from the first proposal for a capped Settlement. Co-Lead Counsel Christopher Seeger emphasized this fact in the initial fee petition submitted on February 13, 2017. Despite the fee petition's many problems, Mr. Seeger's account of this part of the negotiation is accurate. Unlike traditional common-fund cases where the common-benefit fees are sometimes calculated as a percentage of total recovery, the NFL Parties agreed to pay \$112.5 million in attorneys' fees and costs over and above the Settlement's schedule of benefits rather than charging class members for the work done for the common benefit of the class as a whole. *See* Original Settlement Agreement, § 21.1; February 13, 2017 Fee Petition at 26.

The separateness of these negotiations is reinforced by the sequence of events following the Parties' submission of the original Settlement. After the NFL and Co-Lead Counsel agreed to a capped fund, the Court rejected their proposal and required that the recovery fund be uncapped. When the parties returned to the negotiating table, they preserved the basic approach to the claims process, Co-Lead Counsel made concessions to the NFL that imposed additional requirements in the claims process, and the NFL agreed to eliminate the cap on the Fund. The separately negotiated \$112.5 million figure for fees and costs, however, did not change.

Professor Rubenstein’s treatment of the common-benefit fees as a tax on the recovery available to each individual former player relies on the proposition that defendants may be willing to pay a certain overall sum to settle class claims without regard to how much of that sum goes to claimants and how much to class counsel. In such cases, the argument goes, any amount awarded to class counsel constitutes a *de facto* deduction from the recovery available to the class. Expert Report at 4–5 & n.11. That argument has force when defendants pay a single, lump sum to purchase total peace and common-benefit fees are taken out of that fund. *See, e.g., In Re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 2008 WL 3896006, at *1 (D. Minn. Aug. 21, 2008) (“[T]he total settlement fund [of \$240,000,000.00] included payment for Claimants’ recoveries and for common benefit attorney fees.”); Expert Report, Exhibit D at D–1 & n. 4 (citing *In Re Guidant*). This is not such a case. The signature feature of this Settlement is the uncapped nature of the NFL’s payment obligations to the class under a defined schedule of benefits.

Professor Rubenstein cites Judge Becker’s noted decision in the General Motors fuel-tank litigation along with a more recent unpublished Third Circuit ruling in another defective automobile case. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768 (3d Cir. 1995); *Dewey v. Volkswagen Atk.*, 558 F.3d 191 (3d Cir. 2014). These authorities do not support his conclusion. *GM Trucks* involved a coupon settlement with no real value to class members. When the Third Circuit remanded the case to the district court for further proceedings, it expressed skepticism that any class settlement was viable or that any award of attorney fees would be reasonable since “arguably, any settlement based on the

award of certificates would provide too speculative a value on which to base a fee award.” *GM Trucks*, 558 F.3d at 822. The language in *GM Trucks* that Professor Rubenstein quotes is a rejection of class counsel’s attempt in that case to shield their common-benefit fee from any percentage-method check in light of the evanescent value of the settlement. It does not stand for the proposition that the structure of a settlement and the actual course of negotiations between the parties are never relevant to the proper characterization of the common-benefit fee. Likewise, *Dewey v. Volkswagen* involved a settlement in which monetary awards were capped at a fixed sum of \$8 million, with the balance of benefits coming from in-kind service work and preventive maintenance. *See Dewey*, 558 Fed. Appx. at 194 (describing cap on “\$8 million reimbursement fund”); *id.* at 194–195 (describing in-kind benefits of settlement and modifications following remand).

The question before Professor Rubenstein was not whether the proposed award of common-benefit fees is reasonable or how it should be allocated, both of which the Court reserved to itself. Any award of common-benefit fees will be subject to a reasonableness check under Rule 23(e), which is the issue the Third Circuit addressed in *GM Trucks* and *Volkswagen*. The question here is whether and how an award of common-benefit fees might justify a cap on individual contingency contracts. Professor Rubenstein’s decision to treat the total amount of the common-benefit fees as a direct tax against the recovery of class members is an error. This is not a fixed common-fund settlement, and the common-benefit fees were not negotiated as a set-off against the uncapped recovery available to class members.

**Any Estimate of the Total Recovery for the Class Should Be
Calculated Using Actual Data, Not Out-Of-Date Actuarial Figures**

Professor Rubenstein relies on figures advanced as part of the original, capped version of the Settlement when estimating the net present value of the total recovery for all eligible former players. He refers to “the NFL’s actuarial analysis as the mean of the range of confidence interval” and similar analysis advanced by Co-Lead Counsel that together estimated the net present value of the Monetary Award Fund in 2014 at between \$519,400,000 and \$537,000,000. W. Rubenstein Expert Report, Exhibit C, at C-2 (citing ECF No. 6168 at 51; ECF No. 6167 at 50).

If an estimate of the total size of the class recovery will have a bearing on the enforceability of individual contingency fees — which it should not in this case — then that estimate must be based on current data, not out-of-date actuarial figures. As of this filing, the NFL Concussion Settlement Website has logged \$260,112,700 in obligations on 206 payable monetary awards. Approximately 1,557 claim packages have been filed, and 20,389 class members are registered. To be clear, these payable monetary awards cannot be taken as a representative sample of all remaining claims. For example, they include high-value awards to former players who have died and received a post-mortem diagnosis of CTE, a type of claim that will not be repeated in the remaining population of claimants. But these data of payable monetary awards, claims filed, and registered former players are a robust and growing dataset from which the Court can, if necessary, make actual projections.

Professor Rubenstein acknowledges in his report that “it is possible that the class may ultimately claim more” than the estimates in the early actuarial figures. Rubenstein Report at 5 n.11. Those estimates were the best information available at

the time, but they have now been superseded, and their utility was always limited. This case involves substantial personal injury claims, a difficult set of diagnostic protocols, and a population of former players who were trained throughout their careers not to admit to injury or pain. Predicting the scope of injury and the number of qualifying claimants has always been difficult. It is perhaps for this reason the Court concluded that the early actuarial estimates gave insufficient confidence that a capped settlement “would have the funds available over its lifespan to pay all claimants” and required that the Settlement be uncapped. Order of the Court Denying Preliminary Approval to the Original Settlement, at 11–12

LLF respectfully submits that the actuarial assessments on which Professor Rubenstein relied when setting the denominator for his calculations have been superseded by current claims administration data. Even if an estimate of total class recovery has some bearing on a possible cap to individual contingency fees, the old Monetary Award Fund figures used in the Expert Report should not form the basis of that estimate.

**The NFL Delays, Opposes, or Appeals the Majority of Claims
and Awards, Making Qualified Counsel Vital to Player Recovery**

Professor Rubenstein based his 15% cap on contingency fee contracts in part on the assumption that attorneys “should be able to process their clients’ claims through the settlement process without enormous time or expense expenditures.” Expert Report at 22–23. There is no empirical evidence to support that assumption, and experience has demonstrated that the contrary is true. The NFL has demanded interpretations of the Settlement Agreement that delay and obstruct claims. Co-Lead Counsel is resisting, but the NFL now refuses to accept most interpretations of

the Agreement that would make the administration of the claims less burdensome for players. Rather than seeking to settle matters with the class, the NFL litigates claims as though they were individual lawsuits. To cite several examples:

- The NFL imposed BAP criteria on the initial review of every pre-effective date claim, even though BAP criteria do not apply to those claims.
- The NFL imposed a list of more than 100 alleged deficiencies on all pre-effective date claims that have impeded almost all dementia claims.
- The NFL will not agree to the Appeals Advisory Panel's standard of review, even though that standard is clearly set forth in section 6.4(b) of the Agreement.
- The NFL has sought audits on nearly 50% of all submitted claims, substantially delaying those claims and clogging the process so that non-audited claims are adversely affected.
- The NFL has demanded raw neuropsychological scores for 100% of the pre-effective date claims, even for testing that pre-existed the lawsuits.
- The NFL has appealed nearly 20% of the pending monetary awards granted to players, and it appears to be ramping up that effort.

For these and many other reasons, the processing of claims to date has been complex, slow, and difficult. Whether the NFL's actions are based on a legitimate concern to prevent fraudulent claims or a deliberate effort to delay and deny legitimate payment obligations, their actions impose high barriers. Without skilled counsel to navigate this minefield, the cognitively impaired player has little chance.¹

¹ The NFL has a history of this kind of obstruction with disabled players. The case of "Iron Mike" Webster, for example, was the subject of an unpublished Fourth Circuit ruling that detailed the dogged refusal of the NFL Retirement and Supplemental Disability Plans to pay their obligations. Even though every examining neurologist diagnosed Webster with complete neurocognitive disability and found that his disabilities began while he was still an active player, the NFL administrator forced Webster to sue in federal court to receive full benefits. *Jani v. Bell*, 209 Fed. Appx. 305, 306–07 (4th Cir. 2006) (unpublished opinion) (concluding that "the Board

Professor Rubenstein's assumption that claimants would enjoy a streamlined process has proven to be incorrect. Rather, the process of identifying qualified experts who can provide an accurate diagnosis in a form that the claims administrator will accept and that can succeed in the face of the NFL's obstruction has required sophisticated individual representation for each former player. Very few claims have succeeded without a litigated fight over alleged deficiencies, audits, and appeals. Qualified attorneys remain vital to recovery.

**LLF Requests that its 20% Fee be Respected
for its Highest-Risk and Most Resource-Intensive Clients**

For the reasons described above, LLF respectfully submits that Professor Rubenstein's recommendation for a presumptive, undifferentiated cap of 15% on all contingency fee contracts is flawed. That recommendation depends on the incorrect assertion that the \$112.5 million in common-benefit fees should be treated as a direct tax on player recoveries; it relies on out-of-date actuarial estimates to value the overall size of the class recovery instead of developing projections based on concrete claims administration data; and it proceeds on an assumption of smooth sailing for claimants that experience has shown to be incorrect.

LLF recognizes the imperative to ensure that former players receive the maximum compensation that is compatible with a fair recognition of the efforts of the attorneys working on their behalf. LLF therefore accepts the further reduction of its fee to 15% for lower-risk, less-resource-intensive clients. But LLF requests that its contingency fee of 20% be respected for its high-risk and resource-intensive

ignored the unanimous medical evidence, including that of its own expert, disregarded the conclusion of its own appointed investigator, and relied for its determination on factors disallowed by the Plan").

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Response of The Locks Law Firm to Report of Professor William B. Rubenstein dated January 3, 2018 was served via the Electronic Filing System to all counsel of record in Case No. 2:12-md-02323-AB, MDL No. 2323.

DATE: January 3, 2018

/s/ Gene Locks
Gene Locks, Class Counsel

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE; NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION,

No. 2:12-MD-02323 – AB

MDL NO. 2323

Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated,*

Plaintiffs,

CIVIL ACTION NO: 14-cv-0029

V.

National Football League and NFL Properties, LLC
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO ALL ACTIONS

**RESPONSE OF GOLDBERG, PERSKY &
WHITE, P.C., GIRARDI KEESE AND RUSSOMANNO &
BORRELLO TO EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

Goldberg, Persky & White, P.C., Girardi Keese and Russomanno & Borrello (“firms”), pursuant to the December 11, 2017 Order of Court, hereby respond to the Expert Report of Professor William B. Rubenstein, filed December 11, 2017. As an initial matter, the firms agree with Professor Rubenstein that a proposed 5% set-aside should not be imposed on the class. However, the firms have other concerns, which they address in the attached Declaration of Jason E. Luckasevic.

Dated: January 3, 2018

Respectfully Submitted,

/s/ Jason E. Luckasevic

GOLDBERG, PERSKY & WHITE, P.C.
Jason E. Luckasevic

PA ID #No. 85557
Jason T. Shipp
PA ID #No. 87471
11 Stanwix Street, Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 471-3980
Facsimile: (412) 471-8308

GIRARDI KEESE

Thomas Girardi
1126 Wilshire Boulevard
Los Angeles, California 90017
Telephone: (213) 977-0211
Facsimile: (213)481-1554

RUSSOMANNO & BORRELLO, P.A.

Herman J. Russomanno
Robert J. Borrello
150 West Flagler Street - PH 2800
Miami, FL 33130
Telephone: (305) 373-2101
Facsimile: (305) 373-2103

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served upon all counsel of record via the **CM/ECF system**, this 3rd day of January, 2018.

/s/ Jason E. Luckasevic

Jason E. Luckasevic, Esquire

Counsel for Plaintiff

DECLARATION OF JASON E. LUCKASEVIC

My name is Jason E. Luckasevic and I offer this Declaration in response to the Expert Report of Professor William B. Rubenstein, ECF No. 9526, pursuant to 28 U.S.C § 1746 based on personal knowledge, information and belief. In his Report, Professor Rubenstein opines, *inter alia*, that the Court should set a presumptive 15% cap on all contingency fee contracts in this matter. *See id.* at 2. However, Professor Rubenstein states that this Court should establish a process “whereby counsel or their client could seek relief from [the cap] in particular circumstances”. *Id.* at 32. He then gives examples of such circumstances, including:

Some [individually retained plaintiff’s attorneys (“IRPAs”)] argue that they took significant amounts of legal work on behalf of their individual clients prior to the creation of this MDL and/or accumulated so many clients that they really laid the groundwork for this band of cases and this settlement. To the extent those arguments are factually accurate, ***those lawyers may be entitled to more than a 15% fee.***

Id. (footnotes omitted) (emphasis added).

This is very significant because my legal team, consisting of the law firms of Goldberg, Persky & White, P.C., Girardi Keese, and Russomanno & Borrello (“our firms”), filed the first two cases that became the NFL concussion litigation on behalf of 120 former NFL players, *i.e.* *Maxwell v. NFL, et al*, Case No. BC465842 and *Pear v. NFL, et al.*, Case No. LC094453, in the Superior Court of California, Los Angeles County. Our pioneering efforts are detailed in the attached Declarations of Bennet Omalu, M.D. and Robert Stein and the affidavits of Peter Paladino, Thomas Girardi, Robert Fitzsimmons, Robert Cohen, Herman Russomanno, and Counter-Declaration of Jason Luckasevic attached herewith. *See* Exhibits A-H, respectively. Indeed, Professor Rubenstein expressly identifies Goldberg, Persky & White’s groundwork efforts as being, if accurately described, the type that may be entitled to a fee higher than 15%. *See* ECF No. 9526 at 32 n. 102. Moreover, as Co-Lead Class Counsel Christopher Seeger has

expressly stated, “[b]eing the first to file is incredibly important,” [Seeger] said. “[Luckasevic] took a risk.” Michael Sokolove, *How One Lawyer’s Crusade Could Change Football Forever*, Nov. 6, 2014, attached as Exhibit I, at MM42. Hence, at a minimum, this Court should consider the unique, trailblazing work of our firms when determining our contingency fee percentage.¹

Related to this is Professor Rubenstein’s emphasis on the timing of contingency fee contracts. He divides the relevant time periods into 3 separate phases:

- *Phase 1 — Individual litigation.* Lawyers who contracted to represent players prior to the proposed consolidation of these actions into an MDL on November 15, 2011 faced the prospect of pursuing the entire case themselves, perhaps even through trial, and fee arrangements reflecting those large contingencies would have been expected and appropriate.

* * *

- *Phase 2 - MDL.* Arguably, from the time that the NFL made its motion to consolidate these cases into an MDL (November 15, 2011) — and certainly, from the time the motion was granted (January 31, 2012) — lawyers contracting to represent clients were well aware that the costs of doing so had been greatly reduced: pre-trial proceedings would now be consolidated and undertaken once and the likelihood that any case would be remanded for trial declined significantly.

* * *

Phase 3 — Class action settlement. Once the leadership committee in the MDL proposed an aggregate class action settlement in August 2013, and especially after the Court granted preliminary approval in July 2014, it became apparent that IRPAs would be primarily responsible only for processing their clients’ claims through the claims facility.

See ECF No. 9526 at 24-25 (footnotes omitted).

In relation to Phase 1, our firms were retained by 169 former players. In Phase 2, our firms were retained by 345 former players. In Phase 3, our firms retained 36 clients. Hence, almost a third of the contingency fee contracts our firms entered into with former players in

¹ All of our firms’ contingency fee contracts have been reduced across the board to 25% of funds recovered. I note that Professor Rubenstein suggests the propriety of compensating individual work like that done by our firms “*prior to the creation of this MDL*” for the common good from the common benefit fund. *See* ECF No. 9526 at 32 (emphasis added).

relation to this matter were made when we “faced the prospect of pursuing the entire case” ourselves. This certainly militates in favor of special consideration when determining our contingency fees.

Additionally, Professor Rubenstein states that the efforts of individual retained attorneys do not “substantially contribute” to “the results obtained” in this matter because the “claims” values are pre-established and based on medical diagnoses”. ECF No. 9526 at 27-28. However, in addition to the unique contributions of our firms, described *supra*, this statement is belied by the reality of the claims submission process. By illustration, my firm has submitted 135 claim packages for monetary awards. To date, we have received deficiency notices in 99 of those claim packages to date. Many of those deficiency notices concern new language that is not found in the Settlement Agreement asserting new interpretations of the “generally consistent provisions” concerning monetary award diagnoses. Further, many of these claims have had multiple deficiencies. All of the claims have required multiple communications with medical providers to clarify medical criteria requests. Thus far, our clients have received over 30 awards while we have received 9 denials. We have appealed 4 of the claim denials and the NFL has appealed 7 of the monetary awards. Thus, to date more than 25% of our clients’ claims reaching resolution will involve an appeal. Each step in this process requires legal expertise and painstaking exactitude. It is not reasonable to expect former players with significant if not catastrophic cognitive impairment to navigate the claims process without the help of sophisticated legal assistance.

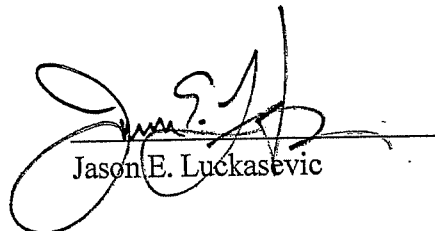
Finally, Professor Rubenstein states that he is assuming that the present net value of the settlement is \$720.5 million, and hence that the percent of the settlement to be paid in relation to the common benefit fund fees is 15.6%. ECF No. 9526 at 4-5. However, Professor Rubenstein

did not have the benefit of the December 11, 2017 Monetary Awards Claim Report produced by BrownGreer LLC (attached as Exhibit J) when he filed his expert report. Therein, it shows that of 234 Notices issued on monetary claims, 191 were deemed payable, and that these awards totaled some \$240,687,567.00, with some 1679 still-pending claims. *See* Exhibit J at 2-3. Even if these 1679 still-pending claims are found to be payable at a rate of 70% of the time, as opposed to the current rate of 81.6%, this would entail more than a seven-fold increase in the total number of claims payable (from 191 to 1366) *just in relation to currently filed claims*. Moreover, each of the 191 monetary awards averaged \$1.26 million. *See id.* at 3. Even if one supposed that the average payment of 1366 claims will be \$1 million as opposed to the current average amount, that would mean still-pending and already-awarded claims will amount to \$1.366 billion. Assuming then that the reduction to present value of this is relatively minor for pending claims, say \$1.275 billion, the actual common fund fee percentage falls from Professor Rubenstein's assumed 15.6% to 8.8%.

Assuming a rate of 8.8%, which is manifestly supported by empirical evidence, *supra*, the need to cap IRPA contingency fees in a draconian fashion is reduced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 3, 2018.


Jason E. Luckasevic

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2: 12-md-2323 (AB)

MDL No. 2323

Kevin Turner and Shawn Wooden,
on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

National Football League, et al.,

Defendants.

Civil Action No.: 14-00029-AB

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

**CO-LEAD CLASS COUNSEL ANAPOL WEISS' RESPONSE TO PROFESSOR
WILLIAM B. RUBENSTEIN'S EXPERT REPORT**

Anapol Weiss supports Professor Rubenstein's methodology capping individual contingent fee awards in conjunction with his suggestions that the common benefit fee allocation appropriately recognizes the work of those plaintiff lawyers who were actively and effectively involved in the establishment of the frame work for this Class settlement before the Preliminary Approval on July 7, 2014. During that time plaintiff lawyers were at the greatest risk for non-payment. Subsequent Common benefit time should have a lesser multiplier. We also concur with Professor Rubenstein's opinion that there should also be an equalization of the hourly rate

across all the law firms applying for common benefit fees¹. Such reduces the tension between lawyers and their individual clients and would equalize the legal fee paid by each class member. This solution also reduces the tension between lawyers who represent clients under a contingent fee agreement and those who do not have many clients but who were given common benefit assignments while other lawyers who were ready and able to work were not. Any other methodology might inadvertently reward lawyers who signed up clients after Preliminary Approval while penalizing plaintiff lawyers who started this litigation. For these reasons, we also agree with Professor Rubenstein that tiered individual fee contracts based on the date of retention creates a disparity in the legal fees paid by some class members. Anapol concurs that there is no need for a 5% set-aside of class members' recoveries. However, in light of the fact that the term of this settlement will extend payments through 2078, a set aside of 1% of the recoveries which is then reasonably invested should yield sufficient funds to pay for the administration of this settlement over the next six decades.

In reviewing other matters and conclusions reached by Professor Rubenstein, we provide these pertinent comments to the factual assumptions which predicate his opinions:

Professor Rubenstein assumes the present value of the settlement was \$720,500,000 and that \$106,817,220.62 represents the requested common benefit fee, which equals 14.83%. Under his analysis a combined fee of 30% is appropriate and where the common benefit fee is 14.83% the contingent fee would roughly be 15%. In Exhibit C to his Report, Professor Rubenstein calculates the present value of the settlement based upon the NFL's actuarial analysis of the net present value of the MAF as \$537,000,000, and the PSC's estimate of \$519,400,000 each

¹ Anapol Weiss notes that Professor Rubenstein met with Plaintiffs' counsel during a preliminary organizational meeting in 2011 to simply provide some views regarding the propriety of pursuing this case as a class action. No other interactions or communications or services were furnished by Professor Rubenstein after that meeting.

determined when the MAF fund was capped. The funds however are uncapped and the estimates for claims administration and the BAP program expenses seem low. If the present value reaches a billion dollars the percentage of the common benefit fee would drop to 9.36%, a figure closer to the 9.67% common benefit fee set out in Class Counsel's common benefit fee petition. Under Rubenstein's methodology a less than 10% overall common benefit fee would allow plaintiff lawyers with fee contracts a 20% fee. It also appears that common benefit time devoted to the BAP and other tasks not associated with the MAF were not analyzed separately. This time benefits the class as a whole, but not necessarily MAF recipients. Doing this might also justify a higher contingent fee under Professor Rubenstein's methodology.

Dated: January 3, 2018

RESPECTFULLY SUBMITTED,

/s/ Sol H. Weiss

Sol H. Weiss, Esquire (I.D. 15925)

Larry E. Coben, Esquire (I.D. 17523)

ANAPOL WEISS

One Logan Square, 130 N 18th St

Suite 1600

Philadelphia, Pennsylvania 19103

(215) 735-1130 Telephone

sweiss@anapolweiss.com

Co-Lead Class Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Case No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and others similarly
situated,*

Plaintiffs,

CIVIL ACTION NO. 14-cv-29-AB

v.

National Football League and NFL Properties,
LLC, successor-in-interest to NFL Properties,
Inc.,

Defendants.

**RESPONSE OF THE STERN LAW GROUP, MOKARAM LAW FIRM, AND THE
BUCKLEY LAW GROUP TO THE EXPERT REPORT OF
PROFESSOR WILLIAM B. RUBENSTEIN**

Howard Langer
Edward Diver
Peter Leckman
LANGER GROGAN & DIVER, P.C.
Three Logan Square, Ste. 4130
1717 Arch Street
Philadelphia, PA 19103
(215) 320-5660

Respondents are three law firms that collectively represent over 600 individual players. They respectfully request that the Court reject Professor Rubenstein’s proposal that it set aside thousands of private contracts made in the context of an efficient market, and impose an arbitrary cap of 15% on fees paid to individually retained plaintiffs’ attorneys (“IRPAs”). Professor Rubenstein’s analysis does not assess the economics of individual representation. Instead, it purports to determine the reasonableness of IRPA fees by a process of subtraction. It assumes—without any formal analysis of risk or of the market—that one-third is a reasonable amount for all lawyers. It then subtracts what he expects to be allocated to class counsel, which leaves 15% (assuming projections of the value of the settlement turn out to be true).¹ It then concludes—contrary to what the market reflects—that 15% is adequate for IRPAs. For the reasons set forth below, the report is seriously flawed and should not be followed.

I. The Court Should Not Set Aside Private Contracts Without Good Reason

As Professor Rubenstein found, the players and attorneys negotiated the contracts at issue in an efficient, active, and competitive legal services market. Report at 28-30. The Third Circuit emphasizes that “courts should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties.” *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 101 (3d Cir. 1985). Courts should abrogate fee agreements only if, “as against the client, it has resulted in such an enrichment at the expense of the client that it offends a court’s sense of fundamental fairness and equity.” *Id.* at 101. There is no such unfairness here.

II. It Is Incorrect to Determine IRPAs’ Share by Subtracting Class Counsel Fees

Professor Rubenstein’s analysis does not assess IRPAs’ fees on their own merits, but in terms of what remains after subtracting class counsel’s fees from a level he deems reasonable—approximately one-third of his valuation of the settlement, including attorney expenses. Implicit

¹ Professor Rubenstein is open about this—his explanation for recommending a percentage substantially below that in other cases (and substantially below the market, even after the settlement) is that class counsel’s 15.6% (as he calculated it) “is a significant limiting factor.” Report at 31 n.99.

is his assumption that class counsel's fees are part of an overall settlement fund, and that payment to the lawyers is therefore at the direct expense of benefits class members would have otherwise received. But this Court expressly found that negotiation of class counsel's fees occurred only after the negotiation of the principle terms of the settlement, *In re NFL Players Concussion Injury Litig.*, 307 F.R.D. 351, 387 (E.D. Pa. 2015), and Professor Rubenstein's assumption is directly contradicted by the Third Circuit's conclusion that "[t]here is simply no evidence in the negotiation process or the final terms of the settlement that class counsel bargained away the claims of retired players in return for their own fees," *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 447 (3d Cir. 2016). Moreover, the settlement was reached—and implemented—with the understanding that many class members retained independent counsel who would be compensated directly by the players. Notice to class members describes the \$112.5 million payment for class counsel and provides that players will pay their own lawyers separately. The official website states, "You can hire a lawyer at your own expense. ... The amount the Settlement Class Member must pay his or her lawyer is based on the contract or agreement he or she signs with that lawyer."²

By structuring the settlement this way, the parties avoided a problem Professor Rubenstein created: under his approach, the reasonableness of class counsel's \$112.5 million fee should be assessed not in terms of such factors as the risks faced and the benefits obtained, but in terms of its fair *portion* of the overall fees. That is not how the litigation has proceeded or how the settlement was designed. Because of the structure of the settlement (and the way it was described to the class), neither class members nor IRPAs had any incentive to challenge the payment to class counsel. Nor would it make sense for them to challenge it now, because reducing class counsel's fee would not benefit the class members, but would merely give money back to the league. Yet Professor Rubenstein's approach would require IRPAs to engage in that

² <https://www.nflconcussionsettlement.com/Un-Secure/FAQDetails.aspx?q=145#145>.

pointless endeavor in order to advocate for an increase in their allocation of fees.

Compounding the problem, the report assumes—with no analysis—that class counsel’s requested fee represents a reasonable proportion of the total allocation. Professor Rubenstein has created a problem that was not there and has failed to undertake the analysis that his approach requires.³

Additionally, because the \$112.5 million payment is fixed, the percentage Professor Rubenstein ascribes to it—15.6%—is a function of his estimated overall value of the settlement, which is highly speculative. If the estimates are significantly lower than the actual value, IRPAs will receive a percentage that is lower than they should have under his approach.⁴ That incorrectly set percentage would further undercut the incentives of IRPAs to invest time and money in their representation.

The approach embedded in the settlement avoids these problems: class counsel’s fee is assessed on its merits, taking into account that it is separate from players’ recoveries, and the IRPAs’ fees are assessed independently, on their merits, with the outcomes of a competitive market as the starting point.

III. The Report Does Not Adequately Address the Core Economic Question of Incentives

The correct way to analyze fees is to address the fundamental question of the level of fees necessary to attract quality attorneys to undertake and litigate beneficial cases over a period of time that could extend decades. The MDL existed because of the high-risk efforts of the attorneys who initially brought the many individual cases. Given the stark individual issues of

³ This is especially significant because many of the reasons he posits for limiting fees overall apply to class counsel and have nothing to do with IRPAs. For example, he characterizes the efforts of class counsel as modest in relation to other class actions of similar scopes. Report at 21-22, 39-40. Similarly, the efficiencies of class adjudication do not apply to the work that remains for the IRPAs, who must continue to provide services to players on an individual basis, and will have to do so for decades to come. If these factors speak in favor of a reduction, it is of class counsel’s, and not the IRPAs’, fees.

⁴ There is good reason to think this might be true. While only a fraction of claims have made their way through the system, the administrator reports over \$260 million in monetary awards.

causation and damages among players, class certification would have been hotly contested. The league had an incentive to seek resolution on a classwide basis because of the existence of thousands of individual cases that would have been separately litigated if class certification were denied. The leverage of those negotiating on behalf of plaintiffs in settling the case before class certification was even briefed derived from the vast number of individual actions. Without individual attorneys with sufficient incentive to bring and litigate those cases, there would have been no classwide settlement.

Moreover, Professor Rubenstein's assumption that IRPAs' roles are essentially mechanical and without significant risk is incorrect. The risks to individual attorneys remain substantial after the settlement. Even with the settlement, the vast majority of players are not expected to obtain *any* recovery, *see* Report at 23, which means that much of the time and expenses IRPAs have and will expend on behalf of their clients (over the next several decades) is likely to be uncompensated, and if it is, much of it will come many years from now. The administration of the settlement has also proved to be far more burdensome and complicated than Professor Rubenstein allows. For example, the settlement administrator's report indicates that, as of December 27, nearly 2,000 monetary claims were submitted, yet only 206 Monetary Award Claims were noticed, and the league has appealed a number of those, which require contested litigation with the league's counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP.⁵ The league has every incentive to ensure that the claims administrator does not allow a high number of claims, and as a result, the claims process standards have been changed over time and there have been inexplicable denials.⁶ Contrary to the characterization of a simple process that unrepresented players can readily navigate, roughly three-quarters of applications have required multiple submissions and remain in limbo, highlighting the uncertainty and need for counsel.

⁵ *See* <https://www.nflconcussionsettlement.com/>.

⁶ *See generally* <http://advocacyforfairnessinsports.org/nfl-concussion-settlement/nfl-concussion-settlement-claims-report-shows-approval-rates-are-still-dismally-low/>.

The need for counsel is only increased by the fact that many of the players suffer disabilities—or will in the future—including dementia and Alzheimer’s, that make the complexities of the settlement especially challenging.⁷

Furthermore, the settlement’s extended timeframe and structure creates inherent risks to the IRPAs not faced by class counsel. Individual attorneys, who have already invested millions of dollars and thousands of hours of time, will expend much more of both over the next sixty-five years. Many players will need to undergo multiple evaluations and submit multiple claims as their conditions progress over this time, so attorneys will have to maintain their relationships with their clients even after any initial claim has been resolved. Others may be fortunate and will not suffer significant deterioration, in which case their IRPAs will recover no compensation for an extended representation. Professor Rubenstein undertakes no analysis of these efforts or risks.

Individual attorneys have sought to be compensated both for the length of the period of their investment and for the risk of non-recovery because of future uncertainties. Individual attorneys understand these risks and costs, which is why they have set their rates as they have, even after the settlement was reached. There are good reasons that players have accepted them—and continue to enter into such agreements—as they understand the value of quality counsel in working hard to maximize their recoveries and assisting them through what may be multiple claims processes.

IV. Professor Rubenstein’s Analysis Undermines His Proposed Cap on Attorneys’ Fees

Rather than addressing these market realities, Professor Rubenstein simply assumes that one-third of the recovery is a fair share for the attorneys overall. Presumably, that is because he believes that one-third is a typical fee arrangement. But contingent fee agreements rarely include

⁷ The only cases that have been rendered more-or-less mechanical for the IRPAs are those that are fully resolved in the Baseline Assessment Program, because that program requires little involvement by the IRPAs and is funded from the settlement fund, requiring no significant financial investment by the IRPAs. Even so, many of these cases may have involved substantial prior investment, and only a fraction of cases with recoveries will be fully resolved without use of the MAF testing process.

costs in the percentage as he has done, so his proposal is even lower than the common 33 ⅓% he cites. In fact, it amounts to a 26% overall allocation of attorneys' fees, with IRPAs receiving only 11% of the overall value of the settlement, plus their expenses.⁸

The data do not support his ad-hoc determination that overall fees should be capped at either 26% or 33%. His analysis shows that early agreements were far above this level—as high as 45%, but averaging roughly 40%. Report at 10, 25. These were, at that time, extremely high-risk cases. Attorneys that players wished to retain were unwilling to take these cases for much less, and 40% rates are not unusual in current practice. Attorneys take on high-risk cases only where there is a possibility of upside reward, yet Professor Rubenstein has proposed to eliminate the risk premium priced into the decision to initiate the cases that made the settlement possible.

The report also confirms that the market efficiently adjusted prices for risk over time. As risks were reduced, the average rate fell. Risk has not come close to being eliminated by the settlement, however, and the settlement also eliminated the upside potential for individuals by capping the recovery at amounts reflecting compromise. Incorporating all this information—including the \$112.5 million payment to class counsel—the market arrived at a post-settlement average fee level for IRPAs alone of 25.9%. Report at 25. Thus, players with full knowledge of the settlement, including class counsel's fee and the remaining risks, and after specifically being told that they would be responsible for paying their lawyers according to their individual

⁸ The actual rate is lower not only because Professor Rubenstein incorporates costs into the one-third allocation (dropping his starting point for calculations to 30.6%), but also because he has erred in his calculations. He calculates fees as a portion of the *total* value of the settlement, including all fees, costs, and the education fund. But IRPAs' fees are percentage of the awards their clients receive—the payments from the MAF. A 15% rate thus amounts to 11% of the overall value of the case and a 20% rate would be needed to obtain 15% of the settlement value.

Professor Rubenstein partially acknowledges the error in a footnote—he backs out class counsel fees, but not other items he includes in the overall value of the settlement. Report at 11 n.42. He nevertheless asserts that these numbers are “a close approximation” because of “unknown” expenses. But he already accounts for IRPA expenses elsewhere, as bringing up the total to around 33% from 30.6%. In any event, the 30.6% number he uses repeatedly for all fees plus class counsel's (but not IRPAs') expenses is incorrect. Correctly calculated, that figure is 26.8%.

contracts, still agreed, in what Professor Rubenstein acknowledges is a competitive, efficient market, to pay an average of nearly 26% of their recoveries *in addition to* what class counsel was to be separately paid from the common fund.⁹ Ignoring market realities, the report dramatically cuts these freely negotiated rates in order to keep the total of all fee payments to both sets of lawyers to 26% plus expenses, which is essentially the same as the 25.9% the market set for IRPAs *alone* with full knowledge of the settlement and the separate payment to class counsel.¹⁰ His analysis essentially concludes that this market rate—or any amount higher than 26% for all attorneys—offends “fundamental fairness and equity.” *McKenzie*, 758 F.2d at 101 (3d Cir. 1985).

There is no evidence that IRPAs systematically took advantage of vulnerable individuals, or of any other systematic market failure, so there is no reason to depart from these private contracts. Nothing material has changed since the settlement was approved. Professor Rubenstein points to the possibility that some individual players may be vulnerable because of the disabilities this case addresses. Certainly, the Court must take care to ensure that a player has not entered into an unfair contract because of any such vulnerability. But the report does not address any such cases and there is no evidence of overreaching by IRPAs. The report is not about aberrations, but about the norms against which such aberrations must be assessed. For such considerations to apply in this context, there would need to be *systematic* imbalances rendering unfair the norms generated by the market. But there is no evidence in Professor Rubenstein’s report suggesting there is such systemwide inequity.¹¹

Professor Rubenstein claims that “the 15% IRPA-specific cap ... accords with the market

⁹ This results in an average of 34% of the overall value (and 40% using Professor Rubenstein’s erroneous method) for individuals who entered into individual representation agreements after the settlement.

¹⁰ The report notes that a few law firms agreed to reduce their rates post-settlement to 20 or 25%, but every one of the firms that lowered its rates is expected to obtain a substantial allocation from the common fee. Most firms, including Respondents here, will not share in that fund.

¹¹ Moreover, to the extent Rubenstein believes that individual disabilities are a widespread problem in terms of navigating this process, he cannot then argue that they do not need lawyers to guide them through the process.

rate in this case,” but his own analysis shows this is not true. First, he only counts the market rate after the approval of the settlement, eliminating any reward for pursuing these cases when they were riskier, and even though it was the existence of those cases that enabled the classwide settlement. Second, he skews the numbers. He states that the average fee in post-settlement contracts is 25.9%, but then characterizes the post-settlement market rate as “20-25%.” Report at 25, 30. Arbitrarily taking the low end of this ad-hoc range, he subtracts another 5% for the set-aside class counsel has requested, bringing the “market” rate down to 15%, even though his own conclusion is that class counsel should get no such set-aside.¹² At every turn, he has made unfounded assumptions to lower the “market rate” to support the fiction that his recommendation comports with the market. Far from being the market rate, there are almost no contracts that include a 15% rate.¹³ See Report at 10. Indeed, Respondents have over 650 players as clients, including a substantial number signed up post-settlement, and only one (at 20%) is below 25%.

Rejecting the results of the market has serious consequences, both in this case and in future cases. Counsel for the individuals might choose to withdraw from representation rather than remain committed to doing work for decades without appropriate compensation (and without there being any certainty about what fee might be forthcoming under a presumptive 15%

¹² There is no evidence that the market incorporated the proposed 5% set-aside. First, the amended settlement merely provided that class counsel may request such a set-aside. But it could have requested a set-aside without mentioning it in the settlement, and its inclusion did not alter the analysis the Court must undertake in determining whether it is appropriate. Its sole practical effect was to signal that class counsel intended to make the request. Thus, the provision represented at most a confirmation of preexisting risk that up to five percent might be set aside for class counsel. And Professor Rubenstein’s conclusion that class counsel should not be awarded the set-aside is flatly inconsistent with his suggestion that the full five percent should have been priced in.

Moreover, if the modified settlement had the effect he proposes, then it would be evident in the data. In that case, law firms would have raised their rates by 5% from whatever they were at the time when the set-aside was first proposed. Respondents here never adjusted their rates in response to the proposed set-aside, and there is no evidence that any other firms did, much less the whole market.

¹³ Professor Rubenstein also unnecessarily erases rational differences between cases. There are a variety of reasons that attorneys would demand different percentages in different cases. A case that appears to involve lower risk or higher expected return would attract attorneys at lower rates, while other cases may be more difficult and/or risky for a variety of reasons. Reflecting these differences, Respondents have agreements with clients that range from 20% to 40%.

system). Individuals who want lawyers will not be able to find competent lawyers to step in, as attorneys would be asked to accept roughly half of the rate that an efficient market determined correctly reflected the risks and rewards of representation. Counsel who remain will have less incentive to devote time and resources than they would at the rate the market deemed efficient. This will be especially harmful for players who suffer the disabilities at issue.¹⁴ Market prices are concrete reflections of the risks and potential rewards of representation, reflecting the collective judgment of participants that the rates are reasonable. They reflect precisely the factors that determine the reasonableness of the fees and that Professor Rubenstein fails to analyze. Market prices are not necessarily the final word, but any departures from agreements made in an efficient market must be justified, and the report does not contain any such justifications.

V. Caps Imposed in Other Cases Do Not Support the Proposed Cap Here

Professor Rubenstein cites thirteen cases involving dual-representation situations in which a cap was imposed that limited the percentage of IRPAs recoveries. First, this is a small subset of cases involving dual-representation of this type, indicating that these caps are far from the norm. And the cases he cites do not support the proposed cap. He has lumped in cases of all sorts, whose rates vary widely, reflecting the need to assess each case independently. Most involve limited funds in which class counsel and IRPAs are seeking portions of the same money. They present the problem that the parties here have avoided by creating a separate fund for class counsel fees. Some involve severely limited funds. Most of the justifications for limited caps in these other cases do not apply here.

The cases that most resemble this case support a much higher level than Professor Rubenstein proposes. Only two of the cases he cited—*Medtronic* and *Deepwater Horizon*—involved a separately allocated fee for class counsel. In *Medtronic*, the court expressly *rejected*

¹⁴ In future cases, attorneys forced to weigh the risk of their fees being cut will be less likely to pursue cases, or will require higher contingent fees to account for the risk of reduced payments.

the claim that the separately allocated fee should reduce individual fees. *See In re Medtronic, Inc. Implantable Defibrillator Prod. Liab. Litig.*, 2008 WL 4861693 (D. Minn. Nov. 10, 2008) (order affirming Special Master’s Report, 2008 WL 4861694, at *5 (D. Minn. Oct. 20, 2008)). It capped individual fees at 33.3% and separately awarded class counsel approximately 10.4%. *Id.* *Deepwater Horizon* capped IRPAs’ fees, but at 25%. *In re Deepwater Horizon*, 2012 WL 2236737, at *1 (E.D. La. June 15, 2012). And that case lacks many of the risks present here, not least the decades-long time horizon for potential recovery of fees and the need to provide detailed medical evidence, often at considerable cost, to establish claims.¹⁵

VI. Conclusion

In sum, neither economics, prior cases, nor, Professor Rubenstein’s own analysis and calculations support capping IRPA fees at 15%. In fact, there is no reason to cap IRPA fee agreements. The average rate, according to Professor Rubenstein, is 29%, which amounts to only 21.6% of the overall settlement value and is only modestly higher than the post-settlement average of 25.9%. Leaving the contracts where they are preserves appropriate differentiation between different cases produced in an efficient market while maintaining a fair and reasonable overall allocation and avoiding the risk of undermining future representation of vulnerable class members. If there is any fundamental unfairness, it is to be found in individual cases, which must be assessed on their own merits, rather than in the outcome of an efficient, competitive market.

Dated: January 3, 2018

By: /s/ Howard Langer
Howard Langer

¹⁵ Nearly all the report’s cases involve caps above 15%. Taken together, they result in an average, by Professor Rubenstein’s calculation, of 20.6%. His justification for a lower rate is that the 15.6% class counsel fee “is a significant limiting factor.” Report 31 n.99. Yet it is only a limiting factor to the extent he has arbitrarily deemed it to be so—especially since those fees are separate and apart from the rest of the settlement. Professor Rubenstein also takes yet another shortcut to the detriment of IRPAs in calculating this average. In one case, the court reduced the bargained-for rate by either one-third or two-thirds. *See In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1418 (D. Wyo. 1998). Yet he entirely ignores the higher “cap,” which would be about 27% for 40% fee contracts, and which would raise his average. He further reduces it by assuming that no contracts included a bargained-for rate higher than 33%.

Edward Diver
Peter Leckman
LANGER GROGAN & DIVER, P.C.
Three Logan Square, Ste. 4130
1717 Arch Street
Philadelphia, PA 19103
Tele: (215) 320-5660

VII. CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of this Response to be served on this date upon all counsel of record via the Court's Electronic Case Filing system.

Dated: January 3, 2018

By: /s/ Edward Diver
Edward Diver

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 12-md-2323(AB)

MDL No. 2323

**RESPONSE AND DECLARATION OF ROBERT A. STEIN TO
PROFESSOR WILLIAM B. RUBENSTEIN'S EXPERT REPORT**

1. Pursuant to the Court's December 11, 2017 Order of Court, Robert A. Stein hereby responds to the Expert Report of Professor William B. Rubenstein, filed on December 11, 2017.

2. I represent a number of former NFL players who are settlement class members in this case.

3. Professor Rubenstein's thoughtful analysis regarding class member attorney fees produced opinions as to (a) a presumptive cap on all contingent fee contracts, and (b) the Class Counsel proposed 5% set-aside of class members' recoveries. I agree with his recommendation as to the latter, and wish to briefly explain a major fault in the underlying actuarial projection of \$950 million for the amount to ultimately be distributed through the Monetary Award Fund ("MAF") which he relied upon in the former. This actuarial omission could dramatically affect Professor Rubenstein's opinion and the Court's intent for the settlement itself.

4. **The "Billion Dollar Settlement" payment to the class is largely speculative.** Public comments by Class Counsel and NFL representatives treat the projections of actuaries hired by them as similar to typical class action settlements wherein fixed, actual amounts are agreed to be paid by Defendants to damaged class members. In this litigation class members only receive monetary awards based upon their receiving Qualifying Diagnoses from settlement-approved physicians once the settlement received final approval. The \$950 million projection

appears to have been based upon actuarial assumptions which did not consider a significant and likely event – the final approval and medical use of a test for CTE in living persons, namely the retired NFL players constituting the settlement class.

5. Class Counsel’s requested fees, if approved, appear to be the only amounts certain to be paid in this settlement, as no minimum payment to class members is fixed by settlement terms. The total amount paid to brain-damaged retired players solely rests on their navigating multiple settlement hurdles. The greatest of these hurdles is CTE.

6. **CTE**, or Chronic Traumatic Encephalopathy, was the centerpiece of initial concussion injury litigation, yet the eventual settlement eliminated it as a Qualifying Diagnosis for payment, and worse, the settlement required the specific release of all CTE claims by class members, other than a short window for recovery by a small number of players who died with CTE prior to final settlement approval.

- a. In the short time since final settlement approval, evidence has mounted that CTE is the overwhelming cause of horrific symptoms in brain damaged ex-players. The Court is well aware of the recent Boston University study confirming CTE in 110 of 111 deceased, symptomatic ex-players, despite many having been diagnosed and treated for other, similar diseases before death.
- b. Development of tests for CTE in living persons continues rapidly at medical centers including UCLA, where multiple symptomatic ex-NFL players have received preliminary CTE diagnosis.
- c. The actuarial estimate of \$950 million eventual settlement payments did not consider a likely, logical event – the diagnosis of (settlement released) CTE in damaged class members which effectively precludes their qualifying for any

settlement award. Consequently, Professor Rubenstein could not consider the resulting diminution in eventual settlement payments. The reasonable scenario being that once a living person CTE test receives final medical (i.e. FDA) approval, settlement-approved BAP and MAF physicians (the only ones now able to provide Qualifying Diagnoses to justify monetary awards) will, as medically appropriate, administer that test to damaged class members. Every class member testing positively for CTE, like the 110 of 111 tested posthumously at Boston University, will then become ineligible for any settlement award due to the settlement's release of all CTE claims, and of CTE's exclusion as a Qualifying Diagnosis after final settlement approval. Physicians identifying CTE by a medically accepted test would not reasonably continue testing for other conditions, as diagnosis would be medically complete. This could effectively eliminate virtually all settlement awards immediately. This occurrence would cause the "Billion Dollar Settlement" to become far smaller, inconsequential for damaged retired NFL players from that point, and the likelihood may dramatically change the award totals relied upon by Professor Rubenstein for his opinion.

7. I addressed the likelihood of this result and its impact upon my class member clients to both Special Masters in the attached July 20, 2017 communication, requesting their response to help advise class members and retired NFL player clients who had at that time opted out. To the date of this filing I have received no response. A true and correct copy of my July 20, 2017 communication is attached here as Exhibit A.

8. This potential "back door" permitting NFL avoidance of payment to legitimately damaged ex-players is relevant to the consideration of appropriate fixed fees to Class Counsel,

and to potential ranges of contingent fees to individual attorneys upon actual awards to their clients.

Dated: January 3, 2018

Respectfully submitted,

By: /s/ Robert A. Stein
BOB STEIN LLC
2313 Cedar Shore Drive
Minneapolis, MN 55416
Tel: (612) 886-3582
Email: rastein66@aol.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on January 3, 2018, a true and correct copy of the foregoing was filed electronically by CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Robert A. Stein

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION,

Plaintiffs,

vs.

NATIONAL FOOTBALL LEAGUE, et.al,

Defendants.

No. 2:12-md-02323-AB
MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**RESPONSE BY THE YERRID LAW FIRM AND NEUROCOGNITIVE
FOOTBALL LAWYERS TO PROFESSOR RUBENSTEIN'S EXPERT REPORT**

Pursuant to the Court Notice (DKT No. 9527), Neurocognitive Football Lawyers and The Yerrid Law Firm provide their Response to Professor Rubenstein's Expert Report, and state:

1. These Respondents contracted with retired NFL players to represent their interests in the concussion injury litigation. Reduction of Respondents' 25% fee contracts to 15% will cause undue hardship and result in irreparable harm to the players because the 47 page Rubenstein Report fails to meaningfully consider the efforts of counsel for Individually Represented Players (IRPAs) who decided to seek an evaluation for a Qualifying Diagnosis prior to the Effective Date of the Settlement Agreement. Moreover, frustrating an already difficult claims process and making it difficult to proceed without qualified counsel, the NFL parties have actively litigated claims filed by players who chose to proceed outside of the BAP. Finally, limiting contingent fee contracts below 25% on this record violates due process and constitutes an impermissible burden on contracts.

2. In this Response, IRPAs will refer to the lawyers who are representing individual players in all aspects of the claims process. However, there are at least two classes of IRPAs. In the first class are IRPAs like The Yerrid Law Firm and Neurocognitive Football Lawyers who provided the resources and legal advice for players to pursue a Qualifying Diagnosis prior to the Effective Date with independent and highly qualified neurologists, neuropsychologists, radiologists, and other providers selected by the former player. In those claims where a Qualifying Diagnosis was obtained, the undersigned lawyers have then run the gauntlet of the pre Effective Date claims process for their clients.¹ The second category of IRPAs would be those lawyers who elected to enroll their clients in the BAP where those players are evaluated by physicians approved by the NFL Parties.

3. At the time the Amended Settlement Agreement was reached, many players simply did not trust the Baseline Assessment Program (the BAP) with doctors approved by the NFL Parties. In addition, many former players felt the compensation scheme would be inherently unfair against them. Confirming the belief held by many of these former players, Paragraph 30 of the Rubenstein Report notes “despite large dollar figures of potential individual recoveries in this case, the actuarial data prepared by the parties reveal that the vast bulk of the class will receive no money from the MAF and the vast bulk who do receive money will receive relatively small amounts.” In summary, Professor Rubenstein suggests some 61% of the class members will receive approximately \$25,000 to \$50,000. Consequently, many players and their families made the informed decision to avoid that labyrinth without the assistance of skilled counsel with the resources to support their attempts to pursue a fair and accurate diagnosis.

¹ In some cases, these IRPAs will have made the effort to pursue a Qualifying Diagnosis without success. However, under their fee contracts, these IRPAs will then submit those players through the BAP.

4. Accordingly, as authorized by the Amended Settlement Agreement, many former players desired to be evaluated by independent and highly qualified doctors for a Qualifying Diagnosis prior to the Effective Date of the Settlement Agreement. This is why many former players opted to retain IRPAs for what can only be described as traditional contingent fee litigation. With the resources from lawyers like The Yerrid Law Firm and Neurocognitive Football Lawyers, many players were ready to be timely evaluated for a Qualifying Diagnosis prior to the Effective Date of the Settlement Agreement.²

5. Not only did many IRPAs fund that pre Effective Date strategy, but these lawyers also undertook the risk there would be no recovery for their efforts. Despite the Settlement Agreement, a former player will only receive compensation if they obtain a Qualifying Diagnosis and then complete the gauntlet of deficiencies, audits and claim denials. Moreover, there is no reward for a second place finish. A player who obtains a specific Qualifying Diagnosis will only obtain an award after approval of that same diagnosis by the Appeals Advisory Panel (AAP). For instance, if a player has a major neurocognitive disorder with probable Alzheimer's as a Qualifying Diagnosis, that player will only receive a Monetary Award for that Alzheimer's diagnosis. Should the AAP determine or find that player has a 1.5 or a 2.0 diagnosis, this injured former player will obtain no recovery whatsoever. This is why many players chose IRPAs who were willing to undertake the expense and risk to actively pursue the pre Effective Date strategy. In the case of the undersigned, some 140 claims had been submitted for an award by September 20, 2017.³ As of this date, two players received an award but those awards were immediately

² Footnote 33 of the Rubenstein Report perpetuates the mythology that the diminishing inventory of clients held by the firms included in the steering committee is due to "poaching" through the promise of lower fee rates. Although some players may have been motivated by these concerns, many of the players represented by the undersigned were frustrated that their prior counsel were undertaking no efforts to obtain a Qualifying Diagnosis and instead planned to submit the claims of these players through the BAP physicians paid for by the NFL Parties.

³ See October 12, 2017, correspondence from The Yerrid Law Firm to Orran Brown, Esquire (Exhibit 1).

audited leaving their award status in doubt. The vast majority of the remaining claims are still being processed despite the 90-day processing time afforded to the Claims Administrator and the AAP. The remaining claims have been denied or sent to auditing.

6. As a result, the current public perception of this concussion injury litigation is that Class Counsel will receive more than a hundred million dollars in compensation while a vast majority of brain damaged players continue to deteriorate and even die while awaiting payment of their claims, assuming those claims are even approved. Further exacerbating the feelings of the members of the Class is the belief that the process is being “slow played” and unnecessarily delayed. Without the assistance of robust counsel, the players will be irreparably injured because they will continue to suffer while their claims languish. Limiting the already low contingent fee of 25% to 15% will inhibit the vast majority of players who selected IRPAs to pursue a Qualifying Diagnosis prior to the Effective Date while their claims are midstream. Moreover, this limitation will unnecessarily chill future lawyers from representing clients in other similar class actions where the awards remain in doubt.

7. In recommending the 15% cap, Professor Rubenstein makes no reference to the role of IRPAs in pursuing the pre Effective Date Strategy. That is why, in the case of the undersigned, that these former players and their families executed 25% contingent fee contracts with The Yerrid Law Firm and Neurocognitive Football Lawyers, PLLC. Moreover, the undersigned became involved only after the Amended Agreement was in place. An unfortunate airplane crash and the death of the undersigned’s predecessor attorney eventually led to the filing of a Notice of Appearance by The Yerrid Law Firm in this case on December 2, 2016. And, in support of the reasonableness and fairness of their 25% fee contracts, The Yerrid Law Firm and

Neurocognitive Football Lawyers have filed the Declaration of James C. Hauser, Esquire (Exhibit 2).⁴

8. In Paragraphs 37 through 38 of his Report, Professor Rubenstein cites numerous class action cases that set an average IRPA cap at approximately 20.6%. Those cases have little or no application to this matter because the NFL Parties have apparently decided to litigate the claims filed by these retired players. Moreover, this is not the case where the awards are so small that absent class members need protection from overreaching lawyers they have never met or never worked with. Nor is this the case where IRPAs had to “do no more than enroll their clients in the settlement and monitor their progress through the claims valuation process.” Rubenstein Report at Footnote 71 citing Vioxx Products Liability Litigation, 650 F.Supp. 2d 549, 561 (E.D. La. 2009).

9. In this regard, Paragraph 29 of the Rubenstein Report is factually inaccurate believing that all IRPAs need only “shepherd the client through the claims process to ensure relief for him” and “IRPAs should be able to process their clients’ claims through the settlement process without enormous time or expense expenditures.”⁵ Instead, as provided in the Declaration of Judge Hauser, the undersigned have spent nearly a million dollars funding this litigation. In addition, more than two thousand hours of attorney time has been spent meeting with former players and their families to review their medical history and complete the steps necessary to represent their interests. Rarely are these medical and employment histories similar. Counsel have then reviewed the medical records of the treating physicians of former players and

⁴ James C. Hauser, Esquire has served as a Florida Circuit Court and Appellate Judge and is hereinafter referred to as Judge Hauser.

⁵ Not only were these unfounded assumptions, these statements are particularly perplexing. Professor Rubenstein is well aware of the actuarial data suggesting many players will have little or no recovery whatsoever.

have in some circumstances met and worked with these treating physicians to understand the medical issues concerning their clients. Only then are these player packages assembled for review by the providers who will evaluate the former players under the rigorous standards imposed under the Amended Settlement Agreement. Although there are some modest economies of scale, most of this work is time consuming and extensive with no promise of an actual award.

10. In failing to consider the specific efforts of many IRPAs, Professor Rubenstein has done what the Third Circuit said could not be done. A district court may not determine the existence of a reasonable fee agreement “by limiting its inquiry exclusively to a facial analysis of the contract.” Dunn v. Porter, 602 F.2d 1105, 1110 (3d Cir. 1979). The Professor Rubenstein Report treats all IRPAs the same and believes that these IRPAs are merely shuffling paper. Instead, in the case of the undersigned IRPAs, former players and their families specifically contracted with The Yerrid Law Firm and Neurocognitive Football Lawyers to pursue a specific strategy to timely seek evaluation for a Qualifying Diagnosis through their independent and highly qualified private doctors. Under these circumstances, as stated by the Third Circuit, “the courts should be loathe to intrude into a contractual relationship between an attorney and client....” 602 F.2d at 1112. That conclusion is buttressed by the fact that in many cases a 25% contingency fee is presumptively reasonable. As noted by Judge Hauser, a 25% contingent fee agreement is presumptively reasonable as the Federal Tort Claims Act, the Social Security Administration and Medicaid routinely use 25% contingency fees for work under their auspices. Moreover, as noted by the United States District Court for the Eastern and Southern District of New York, “[w]here attorneys and clients make private agreements not to exceed 25% of the plaintiff’s recovery, the equities favor enforcement of the privately negotiated compensation

agreement.” See In re Joint E. & S. Dist. Asbestos Litigation, 1991 U.S. Dist. Lexis 7527, Civil Class Action No. 90-3973 (E.D. New York and S.D. New York 1991). In addition, as noted by Judge Hauser, the Florida Supreme Court has found an unconstitutional impairment of contracts when the Florida Legislature sought to reduce a contingent fee agreement below the 25% agreed to between the parties and authorized by statute. Searcy v. State of Florida, 209 So.3d 1181 (Fla. 2017). As noted by Judge Hauser, this is not a normal class action lawsuit. Unlike other settlements where members will receive some kind of award, no award will be paid unless each member proves their claim through medical and neuropsychological testing. Consequently, this is more of a case of first impression that militates against any such fee reduction.

11. Finally, Professor Rubenstein bases his 15% fee cap in part on the fact that the former players are paying 15.6% of their effective monetary awards to fund the \$112.5 million dollar common benefit fund. Because of that common benefit fund, Professor Rubenstein seeks to shoulder 100% of that burden on the IRPA fee contracts. It does not appear, however, that Professor Rubenstein gave any thought to reducing any amount of the common benefit fund. Nor does Professor Rubenstein address the issue that many of the same lawyers who will benefit from the common fund are also asserting attorney liens against the IRPAs that are actively pursuing the pre Effective Date strategy. Many of these firms have wrongly argued that their clients had been “poached” by these IRPAs when instead these firms failed to aggressively represent the interests of those individual players who wanted to follow the pre Effective Date strategy.

12. In this regard, in Paragraph 35(a), Professor Rubenstein notes that several of the large firms representing numerous clients have elected to reduce their contingent fee contracts down to 25% or even 20%. However, those firms will be recipients of their share of the common

benefit fund. Their compensation is not really 20% and their risk is much less. Some of the clients who left those firms did so out of frustration that their claims were not being timely processed. One could argue these firms only processed their most valuable players and the players who left and sought substitute counsel possess inherently riskier claims. Finally, through their charging liens, the firms who reduced their fees still seek to collect additional fees.

13. Instead, in those claims represented by The Yerrid Law Firm and Neurocognitive Football Lawyers, these lawyers do not share in the common benefit fund. Their fees are effectively limited to their fee contracts. In this regard, Judge Hauser has offered the expert opinion supported by a factual record that the Neurocognitive Football Lawyers have provided a substantial benefit to the clients they represent in this matter, the 25% fee charged by these lawyers is inherently fair because of the risks undertaken and the substantial costs advanced in prosecuting these claims, their clients needed their representation because none of the common benefit fund lawyers assisted them in obtaining a Qualifying Diagnosis, and a 25% contingent fee contract is presumptively reasonable. Finally, the argument that IRPAs had already reduced their fee expectations by 5% is simply not true. For the reasons and evidence proffered by Judge Hauser, the 15% contingency fee cap should be rejected by the Court.

14. With regard to the 5% set aside, the undersigned agree with Professor Rubenstein that the request should be denied; however, there has been insufficient time to address these issues in light of his report. Instead, the undersigned must rely on their previous filing at Docket No. 7350, dated March 21, 2017, filed as Response Objection and Memorandum in Opposition to Co-Lead Counsel's Petition for an Award of Attorneys' Fee, Reimbursement of Costs and Expenses, Adoption of Set Aside of Each Monetary Award and Other Relief.

15. As a procedural matter, this Court has put the undersigned at a tremendous disadvantage and due process has not been afforded. On December 11, 2017, the Court directed that any interested parties had to respond to the Report of Professor Rubenstein on or before January 3, 2018. As a matter of due process, this deadline provided the undersigned with barely twenty three calendar days to respond to a sweeping expert opinion covering many different issues during the middle of the holiday season. Although the undersigned have attached the Declaration of Judge Hauser as an Exhibit to this brief, the undersigned have not had the opportunity to present evidence or to cross examine Professor Rubenstein on the 15% cap he seeks to impose. Moreover, there was insufficient time to even address the 5% fee set aside. Without the benefit of these rights and a full and fair opportunity to present evidence and argue the law and evidence at a hearing, any reduction of the contingent fee amounts not only becomes an inappropriate impairment of a contract but also a violation of due process.

WHEREFORE, Neurocognitive Football Lawyers, PLLC and The Yerrid Law Firm respectfully request this Honorable Court to reject the 15% contingency fee cap sought to be imposed on the contingency fee contracts between the former players and the undersigned, and all other relief that is just and equitable. In the alternative, it is requested this Court appoint a Special Master whose sole function will be to determine the reasonable amount of fees and recommend an allocation of those fees to the attorneys involved in this matter. Such process would undoubtedly unburden the Court from that task, and in doing so, allows your Honor to put exclusive focus and efforts on the long-overdue payments that should have already been made to the injured players or their estates.

Dated: January 3, 2018

Respectfully submitted,

/s/ Ralph L. Gonzalez

C. STEVEN YERRID, ESQ.

RALPH L. GONZALEZ, ESQ.

HEATHER N. BARNES, ESQ.

THE YERRID LAW FIRM

101 E. Kennedy Boulevard, Suite 3910

Tampa, Florida 33602

(813) 222-8222 (telephone)

(813) 222-8224 (telefax)

hbarnes@yerridlaw.com

cjameson@yerridlaw.com

kodell@yerridlaw.com

Florida Bar No. 207594

Florida Bar No. 564140

Florida Bar No. 85522

JIM HOLLIDAY, ESQ.

HOLLIDAY KARATINOS LAW FIRM PLLC

18920 N. Dale Mabry Hwy. Suite 101

Lutz, Florida 33548

(813) 868-1887 (telephone)

(813) 909-8535 (telefax)

jamesholliday@helpinginjuredpeople.com

Florida Bar No. 45284

THOMAS PARNELL, ESQ.

GIBBS & PARNELL, P.A.

722 E. Fletcher Ave.

Tampa, Florida 33612

(813) 975-4444 (telephone)

(813) 975-4445 (telefax)

Florida Bar No. 441988

JEFFREY MURPHY, ESQ.

JEFFREY D. MURPHY, P.A.

511 W. Bay St., Suite 352

Tampa, Florida 33606

(813) 443-5553 (telephone)

(813) 436-5190 (telefax)

Florida Bar No. 860808

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2018, I caused the foregoing Request to be electronically filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

/s/ Ralph L. Gonzalez
RALPH L. GONZALEZ
THE YERRID LAW FIRM

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

THIS DOCUMENT RELATES TO:
ALL ACTIONS

JA8431

I. INTRODUCTION

In accordance with the Court's leave (ECF No. 9527), Co-Lead Class Counsel ("Class Counsel") respectfully submits this response to the Expert Report of Professor William B. Rubenstein, which was docketed on December 11, 2017 (ECF No. 9526) ("Report" or "Rpt.").

Class Counsel appreciates the Report's thoroughness and the level of effort and commitment to detail that unmistakably went into its preparation, as well as the overall constructive tone and nature of Prof. Rubenstein's observations and recommendations. Nevertheless, Class Counsel respectfully disagrees with certain of Prof. Rubenstein's assumptions, findings, and recommendations – in particular, the assumption that Class Members will pay 15.6% out of their recoveries as fees to Class Counsel, which informs both of his recommendations (in favor of a cap on individual attorneys' fees at 15% and against the adoption of a 5% holdback or set-aside from monetary awards¹) – and accordingly submits this response in order to address them.

II. ARGUMENT: PROF. RUBENSTEIN'S REPORT REFLECTS CERTAIN FAULTY ASSUMPTIONS

A. The Threshold Fundamental Assumption That Class Members Are Paying 15.6% of Their Recoveries as Fees to Class Counsel Is Incorrect

The Report's starting point, which shapes both of Prof. Rubenstein's recommendations, is the finding that Class Members are paying 15.6% of their recoveries as fees to Class Counsel. *E.g.*, Rpt. at 1, 5-6, 11, 17-18, 20, 31.² It is based on that repeated core assumption that Prof. Rubenstein determines that, when potential individual retainer fees are added, Class Members are

¹ "Monetary award" encompasses Monetary Awards under Article VI of the Settlement Agreement (ECF No. 6481-1) and Derivative Claimant Awards under Article VII thereof, including awards made to Representative Claimants.

² Page references to the Report are to the original document, not to ECF pagination. The pagination varies only slightly, with the ECF pagination being only one digit higher. Thus, page 1 of the Report is page 2 of ECF No. 9526.

paying “two sets of lawyers” and face average “total” potential fees “out” of their recoveries of 44.6% to as much as nearly 61%. *E.g., id.* at 2, 10-11, 20, 22.

That assumption, however, is flawed for three reasons. *First*, Class Members are not paying Class Counsel’s fees “out” of their recoveries. Rather, the NFL is paying Class Counsel’s fees separately. Prof. Rubenstein computed the \$112.5 million that the NFL deposited into the Attorneys’ Fees Qualified Settlement Fund (“AFQSF”) to be 15.6% of the \$720.5 million that he estimated to be present value of the recovery. *See id.* at C-2. This was error because the percentage of the recovery is a relevant calculation here only in gauging the reasonableness of Class Counsel’s requested fees and cannot be treated as an actual piece of a common fund being subtracted and parceled out for payment of fees and expenses.³

One cannot assume that, had the NFL not agreed to pay Class Counsel’s fees directly, it would have surrendered an identical sum as additional settlement benefits.⁴ Indeed, that the Settling Parties negotiated fees only *after* reaching agreement on the Settlement’s material terms (*e.g.*, ECF No. 6423-6, at 9 [¶¶ 18-19]) belies any notion that additional settlement consideration from the NFL could have been expected in the absence of its separate payment of fees and expenses. Put simply, Prof. Rubenstein incorrectly treats this *constructive* common fund case the same as one involving an *actual* common fund out of which fees would be taken.⁵ Settling

³ *Cf. United States v. City of N.Y.*, No. 07-CV-2067-NGG-RLM, 2016 WL 3417218, at *2 (E.D.N.Y. June 16, 2016) (“[T]he . . . attorneys’ fees are not being taken from the class common fund at all. Instead, the attorneys’ fees here were negotiated separately from the class recovery and are being paid directly by Defendant.”).

⁴ *Cf. In re HP Inkjet Printer Litig.*, No. 5:05-CV-3580 JF, 2011 WL 2462475, at *1 (N.D. Cal. June 20, 2011) (“Although the fee award was less than class counsel requested, the award is to be paid directly by HP, and thus the [fee award] reduction *did not increase the amount to be received by class members.*”) (emphasis added).

⁵ *See Cohen v. Chilcott*, 522 F. Supp. 2d 105, 121 (D.D.C. 2007) (constructive common fund settlement “has separate funds for class recovery and attorneys’ fees” whereas “[i]n a true common fund case, attorneys’ fees are paid out of a common fund shared with class plaintiffs, such that the amount recovered by plaintiffs is reduced

defendants are, of course, cognizant of their overall exposure and outlays for fees are part of the overall cost of settling. But in the unique circumstances of an uncapped settlement and a fee agreement entered into after the merits were resolved, simply lumping together fees and awards belies reality.

Second, even accepting Prof. Rubenstein's methodology, his 15.6% figure has to be premised on the right numerator and denominator. In fact, there are errors in each. Prof. Rubenstein understates the Settlement's net present value ("NPV")⁶ and also overstates the amount to be recovered as fees. The Settlement's NPV is more than \$260 million higher than the \$720.5 million value that Prof. Rubenstein ascribes to it. *See* Rpt. at 4, C-2; *infra* at 4-5. Prof. Rubenstein ascribes only a \$51 million NPV to the \$75 million BAP (*id.* at C-2) – almost a full one-third less. That is plainly too low. Because the deadline for most Retired NFL Football Players to have a BAP examination is two years from the BAP's launch (*see* Settlement Agreement § 5.3 [ECF No. 6481-1, at 25]), the reality is that they will have undergone an examination in the Settlement's early years of implementation. Furthermore, given the higher-than-projected Class participation rate, *see infra* at 4, the NFL will likely have to spend more than \$75 million on the BAP because every eligible Retired NFL Football Player is guaranteed an examination, irrespective of the \$75 million BAP funding cap. Settlement Agreement § 23.1(b) [ECF No. 6481-1, at 84].

In addition to the undervaluation of the BAP, the Monetary Award Fund ("MAF") has a substantially greater present value than \$537 million (*see* Rpt. at C-2). Class Members'

by the amount awarded in attorneys' fees"); *see also Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014) ("[T]his case does not involve a true common fund because Volkswagen is paying the fee out of its own pocket and not through the reimbursement fund.").

⁶ Prof. Rubenstein opines that, in assessing the reasonableness of the requested fees, the Court should look to the Settlement's NPV, not the total final projected value over the Settlement's lifespan. Rpt. at 4-5 n.10. Class Counsel will not dispute the use of NPV. As discussed below, however, that does not alter the fact that Prof. Rubenstein undervalues the Settlement.

participation rate has proven to be much higher than had been projected at the time that the Class's expert, Dr. Thomas Vasquez (and the NFL's expert, for that matter), had valued the Settlement. *See* Thomas Vasquez, Ph.D., *An Updated Analysis of the NFL Concussion Settlement* at 2-3 & 6 (Jan. 3, 2018) ("Vasquez Updated Analysis") (copy annexed as Ex. A to Decl. of Christopher A. Seeger, dated Jan. 3, 2018 ["Seeger Decl."]); *see also* Seeger Decl. ¶ 3 (monetary award claims data as of Dec. 19, 2017). Based on this higher-than-anticipated participation rate, Dr. Vasquez now estimates that the NPV of the MAF is more accurately \$785 million. *See* Vasquez Updated Analysis at 4 (Table 1).⁷

Third, the use of a "15.6% fee" figure improperly conflates fees and expenses. Only briefly does Prof. Rubenstein acknowledge that, of the \$112.5 million AFQSF, \$5,682,779.38 would be allocated to reimbursement of expenses while the fee portion amounts to \$106,817,220.62. *Rpt.* at 4; *see* ECF No. 7151-1, at 14-15, 67. Expenses are to be paid off the top because they represent sums that were already advanced and which will be reimbursed.⁸ Thus, the reimbursement of incurred expenses should not be lumped together with the award of Class Counsel's attorneys' fees, and should not be taken into account in determining the reasonableness of the requested fees

⁷ It also bears mention that the Settlement is not like a typical securities, consumer fraud, antitrust, employment discrimination, ERISA, or other class action settlement. The guarantee that *every* member of Subclass 1 (*i.e.*, those without a Qualifying Diagnosis at time of preliminary approval) will be entitled to a monetary award if he manifests a Qualifying Diagnosis at some point over the MAF's 65-year term confers an "insurance policy" benefit that has a genuine value, even if intangible. Put another way, this should not be looked at as a claims-made settlement that will benefit only a few thousand who manifest a Qualifying Diagnosis. Rather, it provides protection or coverage for life for many thousands of Retired NFL Football Players, even if they never develop an ailment. And because the Settlement deals with a population that is unique and has not been fully studied, if the actual illness rates are greater than were forecast, all of those claims will still be paid.

⁸ *See Hackwell v. United States*, 491 F.3d 1229, 1239 (10th Cir. 2007) (noting "the historical and lexical distinction between a fee for services rendered and reimbursement for costs incurred," and that expenses "are charges in addition to the lawyer's fee") (citing treatise; internal quotation marks and italics omitted).

(or in using a lodestar cross-check to test that percentage).⁹ Based on the Settlement's true total NPV of \$982.2 million, the correct percentage (*i.e.*, that attributable to fees alone) that the requested fee award would represent is equivalent to 10.9% of the value of the recovery. Vasquez Updated Analysis, at 3-4 & Table 1. Even under Prof. Rubenstein's undervaluation of the Settlement, it should be 14.8%, not 15.6%. *Id.*; Rpt. 4.

B. The Recommendation Against the Requested Set-Aside Overlooks the Increased Burdens That Class Counsel Faces under the Operative Settlement Agreement

Prof. Rubenstein notes that the initial settlement agreement presented to the Court did not contain a 5% set-aside provision. Rpt. at 35. He then opines that the requested 5% set-aside is unwarranted because the second Settlement Agreement neither enhanced the recovery for the Class nor increased the workload of Class Counsel in the Settlement's implementation phase. *Id.* at 36. Both of those observations are incorrect.

First, putting aside that a rejected settlement agreement should have no bearing, it is inaccurate to say that the operative Settlement Agreement did not enhance the Class's recovery.¹⁰

⁹ See, e.g., *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496-500 (3d Cir. 2017) (affirming district court's award of 28% of recovery as class counsel fees, and remanding for further proceedings as to determination of expenses to be awarded); *Kifafi v. Hilton Hotels Ret. Plan*, 999 F. Supp. 2d 88, 100-05 (D.D.C. 2013) (analyzing requested fees as percentage of common fund and separately awarding expenses); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 474-76 (W.D. Va. 2011) (same); *In re Amgen Inc. Sec. Litig.*, No. CV 7-2536 PSG (PLAX), 2016 WL 10571773, at *9-10 (C.D. Cal. Oct. 25, 2016) (analyzing requested fees both as percentage of common fund and under lodestar method and separately awarding nearly \$6.6 million in expenses); *Cox v. Cmty. Loans of Am., Inc.*, No. 4:11-CV-177-CDL, 2016 WL 9130979, at *2-3 (M.D. Ga. Oct. 6, 2016) (analyzing requested fees as percentage of common fund and separately awarding expenses); *Guthrie Cty. State Bank v. Mahlmann*, No. 90 C 4497, 1993 WL 50854, at *1 (N.D. Ill. Feb. 24, 1993) (same). Indeed, that it is not customary to conflate fees and expenses is confirmed by the very empirical study that Prof. Rubenstein relies upon in discussing the appropriateness of the fee percentages here. That study *separated* expenses from fees before reporting its fee percentages. See Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*, 7 J. OF EMPIRICAL LEGAL STUD. 811, 833 (2010) ("These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court's order or counsel's motion for fees and expenses (which was 96 percent of the time).") (reproduced at ECF No. 7151-28, at 24).

¹⁰ Prof. Rubenstein refers to the "second" Settlement Agreement (ECF No. 6087) – *i.e.*, the one to which the Court granted preliminary approval on July 7, 2014. Because it is materially identical for purposes of this

The MAF's uncapping in the operative agreement ensures that every Class Member demonstrating a Qualifying Diagnosis during the MAF's 65-year term will receive the monetary award for which he is eligible without fear of the MAF's exhaustion due to unforeseen circumstances.

Second, the MAF's uncapping altered the dynamics of Class Counsel's interactions with the NFL. Under a capped agreement, the NFL obviously had no incentive to aggressively challenge monetary award claims and determinations because it knew that, at the end of the day, its financial exposure under the MAF was limited to \$675 million. The uncapping of the MAF, however, created an incentive for the NFL to vigorously challenge claims in order to minimize its outlay over the 65-year course of the Settlement. As of December 31, 2017, the NFL has filed no fewer than 25 appeals of monetary award determinations. Seeger Decl. ¶ 4.¹¹

The uncapping has also incentivized the NFL to seek more restrictive interpretations of the Settlement Agreement in general, as is illustrated by the recent briefing before Special Master Pritchett of the Settling Parties' dispute over the effect of players' deactivation from a team's game-day roster in crediting time spent on the team's "Active List" for purposes of "Eligible Seasons" credit. *See* ECF No. 9513. Class Counsel's successful disputation of this issue illustrates not only how he must maintain the fight on Class Members' behalf in the implementation phase but also how his efforts continue to yield a direct, positive class-wide impact.¹² Put simply,

discussion, Class Counsel refers instead to the amended February 2015 Settlement Agreement (ECF No. 6481-1), which is the operative one to which the Court granted final approval on April 22, 2015.

¹¹ The appeal deadline had yet to run in the case of another 32 monetary award determinations. *Id.*

¹² Other disputes with the NFL that Class Counsel has been addressing include how to resolve the opposition of physicians who participate in the Collective Bargaining Agreement's so-called "88 Plan" to signing Diagnosing Physician Certifications (a form required as part of a monetary award claim package). Class Counsel is seeking to allow a Retired NFL Football Player with an 88 Plan diagnosis to be either independently examined by a Qualified MAF Physician or to have his medical records reviewed by a member of the Appeals Advisory Panel, with his date of diagnosis related back to the date of diagnosis for 88 Plan purposes. The matter of how to accommodate 88 Plan diagnoses has been submitted to Special Master Verrier for resolution. Seeger Decl. ¶ 5.

although Class Counsel's anticipation of the additional work necessary to deliver the Settlement Agreement's benefits to Class Members has been borne out in many respects, Class Counsel had not expected that the NFL would employ the Settlement's anti-fraud provisions to the degree it has both to challenge monetary awards aggressively and to seek restrictive interpretations of the Settlement Agreement.¹³

For these reasons, Prof. Rubenstein's argument that common benefit fee awards typically compensate lead or class counsel both for securing a settlement and in implementing it (Rpt. at 37-38) is inapposite here given the *sui generis* nature of the Settlement. The Settlement not only has a unique 65-year lifespan,¹⁴ but also, as noted above, Class Counsel's responsibilities in overseeing its effectuation have gone (and will continue to go) well beyond mere administrative or ministerial functions, resulting in his firm having to expend substantial time and resources on Class Members' behalf, including by litigating on their behalf (whether before this Court in connection with third parties' activities or before the Special Masters in connection with disputes with the NFL).¹⁵ None

Another dispute is over what diagnostic criteria satisfy the pre-Effective Date "generally consistent" language in Section 6.4(b) and Exhibit A-1 of the Settlement Agreement relating to Qualifying Diagnoses for purposes of demonstrating Level 1.5 and 2 Neurocognitive Impairment. *See* ECF No. 6481-1, at 37, 106-08. The NFL has argued that the impairment levels that drive the BAP, which are narrow, should guide, whereas Class Counsel maintains that a more generous and inclusive standard, the "dementia" diagnosis, should guide. Class Counsel has submitted statements to the Special Masters on this issue in support of individual Class Members in connection with appeals of monetary award determinations. *Seeger Decl.* ¶ 6.

¹³ Nor, just as importantly, could Class Counsel have expected the extent to which third-party lenders and claims services providers would emerge to profit off Class Members' backs. The Court is well acquainted with the extensive work done by Class Counsel to protect Class Members from such third parties over the course of this year. *E.g.*, ECF Nos. 7101, 7122, 7470, 8037, 8362-63, 8392-93, 8410-11. What became apparent is that an uncapped MAF created a greater inducement for such profiteers to aggressively target Class Members because there is more financial room to game the system.

¹⁴ In this respect, the Report unfortunately overlooks the unavoidable need down the road to transition responsibility for the oversight and effectuation of the Settlement to future generations of class counsel.

¹⁵ Prof. Rubenstein maintains that "there should not be a high level of work" down the road "if the parties establish a sound claims administration program." *Id.* at 43. That belief, however, stems from the incorrect assumption that the claims process is routine or mechanical. *See id.* at 25 (commenting that, after Settlement's

of the cases that Prof. Rubenstein cites (*id.* at 37-38 n.121) – two of which were consumer actions and a third an ERISA case – involved settlement implementation as involved and demanding as that here. The roughly \$6 million in implementation-related lodestar that Class Counsel’s firm has accrued since the Settlement’s Effective Date is further testimony to this.¹⁶

C. The Suggestion That the AFQSF Also Cover Attorneys’ Fees Going Forward Undervalues Class Counsel’s Substantial Earlier Work in Securing the Settlement

Prof. Rubenstein proposes that, instead of a holdback, the Court award only a portion of the requested \$106.8 million in common benefit fees and set aside the remainder in order to fund implementation-related work or, alternatively, that it stagger payment of fees out of the AFQSF over time (Rpt. at 41-46). The underpinning of these proposals is Prof. Rubenstein’s contention that little actual litigation went into securing the Settlement in comparison to other cases (*id.* at 20-

July 2014 preliminary approval, individual counsel “would be primarily responsible only for processing their clients’ claims through the claims facility”); *id.* at 28 (“[S]ince the claims’ values are preestablished and based on medical diagnoses, the most an IRPA can do is ensure her client receives his fair share.”). The reality, though, is that the claims process here requires the involvement of designated medical experts in personally examining Retired NFL Football Players, and as discussed above, in many instances has been and will continue to be adversarial, especially given the uncapped nature of the MAF. Furthermore, as noted above, to the extent that Settlement Agreement interpretation is at issue in individual claims, Class Counsel necessarily will be involved in addition to or in lieu of individual attorneys.

¹⁶ That lodestar alone belies Prof. Rubenstein’s suggestion that \$1 million annually will suffice to compensate the work that Class Counsel previously enumerated. *See* Rpt. at 42-43; *see also* ECF No. 7464 [at 36-44], 7151-2 [at 32-35 (¶¶ 107-18)]. To date, Class Counsel’s firm has amassed an implementation-phase lodestar many times that low estimate. Besides, Class Counsel did not purport to enumerate everything being done or that will need to be done to implement the Settlement. *See* ECF No. 7464, at 36. Class Counsel has been forced to expend considerable time and resources in dealing with third-party issues (*see supra* at 7 n.13), and with the NFL over its interpretation of the Settlement Agreement. No more meritorious is Prof. Rubenstein’s suggestion that Class Counsel’s hourly rates should be capped in the implementation phase. Rpt. at 44-45. Even if some other law firms bill at lower rates, Class Counsel is reasonably entitled to be compensated at his firm’s normal billing rates because the extensive work that must be committed to this case plainly entails opportunity costs – *i.e.*, his firm must forego work on other cases in which it would bill at its normal rates. *E.g.*, *Laffey v. Nw. Airlines, Inc.*, 746 F.2d 4, 24 (D.C. Cir. 1984) (“[E]stablished billing rates . . . represent the opportunity cost of what the firm turned away in order to take the litigation[.]”) (italics omitted), *overruled in part on other grounds by Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988); *Sec. Ins. Co. of Hartford v. Campbell Schneider & Assocs., LLC*, 481 F. Supp. 2d 496, 504 n.8 (D.S.C. 2007) (opportunity costs are incorporated into billing rates). As for Prof. Rubenstein’s recommendation that no multiplier be awarded for implementation-related work (Rpt. at 44), that is a non-issue. Class Counsel has not suggested otherwise, and agrees that implementation-phase work should be remunerated at straight lodestar.

22, 39)¹⁷ and that, therefore, the AFQSF is adequate to compensate Class Counsel both for work done in achieving the Settlement and for prospective work in overseeing its implementation. Prof. Rubenstein justifies his assessment on the need to have a “placeholder” in his analysis. Rpt. at 4 n.6. Even if he did so indirectly and for purposes of opining on the issue of a cap on individual retainer fees or the requested set-aside, Prof. Rubenstein strayed beyond the scope of his assignment in commenting on the reasonableness of Class Counsel’s requested fee – as well as opining on allocation matters by suggesting that some individual attorneys should be compensated out of the AFQSF. *See id.* at 32. The Court specifically reserved to itself the adjudication of Class Counsel’s fee petition (ECF Nos. 7446, 8376 [at 2]).

Given the limited scope of this response, Class Counsel will not dwell on the substance of Prof. Rubenstein’s assertion concerning the extent of the effort that went into securing and defending the Settlement. That work is discussed at length in the opening memorandum in support of the fee petition. ECF No. 7151-1, at 21-36. Any suggestion that Class Counsel did not invest sufficient time in this litigation to warrant the requested \$106.8 million in common benefit fees is simply wrong. Although this may not have been a typical MDL involving extensive discovery, bellwether trials, and the like, all kinds of labors, resources, and ingenuity went into resolving this litigation. The Court is well acquainted with those efforts – which is why, consistent with its directives, the Court should be the one to address them. Because Class Counsel has already earned

¹⁷ The Report’s reliance on a disgruntled attorney’s uninformed assertion that this is the only “mega-fund” settlement in which there was no discovery, motion practice, or trial (Rpt. at 22), is misplaced. In *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.* [“VW Clean Diesel”], No. MDL 2672 CRB (JSC), 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017), and 2017 WL 3175924 (July 21, 2017), the court awarded a total of \$300 million in attorneys’ fees and costs based on the extensive work performed by the class counsel there over a much shorter period of time than was the case here, and where that work entailed minimal discovery and no trial. Here, Class Counsel invested time and incurred expenses over a much longer duration, including defense of the Settlement at three judicial levels (and more than once in the Court of Appeals).

the requested fees and none of the extensive implementation-related work forms the basis for the common benefit fee request, it is simply not correct to say that the adoption of a set-aside would result in Class Counsel being paid twice for the same work (Rpt. at 47).¹⁸

III. CONCLUSION

For the foregoing reasons, because certain aforementioned assumptions and findings in the Report are inaccurate or unsupported, the Court should reject its recommendation and adopt the requested five-percent set-aside from Class Members' monetary awards.

Date: January 3, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
77 Water Street
New York, NY 10005
Tel.: (212) 584-0700
Fax: (212) 584-0799
cseeger@seegerweiss.com
CO-LEAD CLASS COUNSEL

¹⁸ Nor should the Court accept the Prof. Rubenstein's further alternative suggestion that, instead of a holdback, Class Counsel pursue additional fees from the NFL to fund implementation-related common benefit work. *See id.* at 40. That will protract the resolution of Class Counsel's fee petition for months, inasmuch as Prof. Rubenstein himself acknowledges that the Settlement expressly limits the NFL's responsibility for payment of Class Counsel's fees to those "ordered by the Court as a result of the initial petition by Class Counsel." Settlement Agreement § 21.1 [ECF No. 6481-1, at 82]; *see* Rpt. at 37. Class Counsel would have to prepare a major supplement to the fee petition in order to present a claim that the NFL pay more in fees to fund implementation work, and such a supplemental petition would undoubtedly trigger a round of contentious briefing before the Court can render a final adjudication of the fee petition filed last February. It would be unjust to further delay an award of fees and reimbursement of expenses by bringing in the NFL for such additional proceedings. Moreover, Class Counsel should not be put in the position of expending time, money, and resources to effectuate the Settlement and in dealing with the attendant implementation-related disputes with the NFL while simultaneously having to battle the NFL to pay additional fees to fund implementation-phase common benefit work. Of course, given its familiarity with the work already performed and efforts that will be required over the long haul, the Court can always take the initiative to direct the NFL to augment the AFQSF for the purpose of compensating implementation-related common benefit work.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on January 3, 2018.

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

DECLARATION OF CHRISTOPHER A. SEEGER

CHRISTOPHER A. SEEGER declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, information and belief, the following:

1. I am Court-appointed Co-Lead Class Counsel for the Settlement Class that this Court certified in its Amended Final Order and Judgment entered on May 8, 2015 (ECF No. 6534) in accordance with its April 22, 2015 decision (ECF No. 6509) granting final approval to the February 13, 2015 Class Action Settlement Agreement, as amended (ECF No. 6481-1). I am fully familiar with the matters set forth herein, which are based on my personal knowledge and review

EXHIBIT A

AN UPDATED ANALYSIS OF THE NFL CONCUSSION SETTLEMENT

Prepared by:
Thomas Vasquez Ph.D.
Ankura Consulting Group
January 3, 2018

I was originally asked by Co-Lead Class Counsel in *In re National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.) to undertake an analysis to assist in settlement negotiations in mid-2013. My conclusions from that work are reflected in the NFL Concussion Liability Forecast, dated February 10, 2014. In late 2014, Co-Lead Class Counsel asked me to prepare a Declaration and to elaborate on certain elements of the work I had conducted for my initial report. A discussion of those analyses is contained in my Declaration, dated November 12, 2014. In April of 2017, I provided updated analyses to reflect changes to the initial settlement agreement and additional data concerning Class Member participation rates. A discussion of those analyses is contained in my report, dated April 10, 2017.¹

I have now been asked by Co-Lead Class Counsel to address certain aspects of the analysis conducted by Professor William B. Rubenstein. Professor Rubenstein computes a measure to show the percent of the settlement value accruing to Class Counsel. He computes the percent by dividing total Class Counsel “Fees” by the Net Present Value of the sum of: (1) payments made to claimants from the MAF, (2) cost of the BAP, (3) the Education Fund, (4) Notice Costs, (5) Claims Administration, and (6) Class Counsel “Fees”. I have been asked to determine whether current information on the Class participation rate, actual payments from the MAF fund, and actual administration costs would affect the Net Present Value calculations at the core of Professor Rubenstein’s ultimate conclusions.

Current information, as of December 19, 2017, on participation rates—and, relatedly, actual claimant awards and administrative expenses—reveals that the Net Present Value of the Settlement is substantially greater than the value accorded the Settlement by Professor Rubinstein. Participation rate assumptions in my (and the NFL's) original modeling of the Settlement were a primary driver of expected settlement value. Participation rates in the final, as-approved Settlement program substantially exceed those initially projected (and likewise exceed those for reference settlements considered in developing my early settlement estimates). As a result, the anticipated Net Present Value is expected to be substantially greater than previously projected. The actual claimant awards and administrative expenses incurred to date similarly point to higher Settlement-related payments and costs, and a correspondingly higher Net Present Value.

While a relatively small impact when compared to the impact of recent information, Professor Rubenstein also includes expense reimbursements to Class Counsel as a component of “Attorney Fees” in measuring fees to Class Counsel, which serves to overstate Class Counsel’s fee percentage.

Table 1 provides a summary of the value of the Settlement as estimated by Professor Rubenstein and as updated for actual participation rates and actual spending patterns. Professor Rubenstein's analysis relies heavily on the estimates prepared in 2014 by the NFL actuaries. Indeed, Professor Rubenstein's nominal amounts are taken directly from the report of the Segal Group to the

¹ All three of these documents have been provided earlier and are not reproduced here.

Special Master.² Professor Rubenstein reports total nominal value at \$1,088.5 million and Net Present Value (NPV) at \$720.5 million. He then concludes that this results in Attorney's Fees being approximately 15.6% of total Settlement value (\$112.5 million divided by \$720.5 million).

However, the \$112.5 million represented as Attorney Fees includes a request for reimbursement of expenses incurred by Class Counsel prior to the Effective Date of approximately \$5.7 million. Actual pre-Effective Date Class Attorneys' Fees are therefore \$106.8 million. The third column of the table shows the effect of eliminating expenses. As seen on the Table, without consideration of the impact of actual participation rates on Net Present Value, Attorney Fees are 14.8% of the value of the Settlement.

Of greater significance, as noted above, is the impact of actual Class Member participation rates on the total value of the Settlement. As noted in my original report, the participation rate of eligible Class Members in the Settlement is a critical parameter in valuing the Settlement. *See* NFL Concussion Liability Forecast, dated February 10, 2014, at p. 9. Based on experience with participation rates in other mass tort resolutions, both the NFL actuaries (Segal Group) and I projected Class Member participation to be approximately 60% in the analyses prepared in 2014. Participation rates are now known to be approximately 80%--much higher than forecasted, and much greater than that seen in other similar mass torts (see Table 2 below).

Table 1 also presents the valuation presented by Professor Rubinstein as updated to account for final participation rates, changes in settlement terms subsequent to the initial valuations³ and appropriate treatment of Attorneys' Fees (*i.e.*, net of requested pre-Effective Date expense reimbursement). After appropriately accounting for these items, the nominal value of the settlement increases by approximately 39% and the NPV increases by approximately 36%.

Thus, while maintaining Professor Rubenstein's framework but with the change of accounting for increases in the value of the settlement and the excluding of Class Counsel's out-of-pocket expenses, Class Attorneys' Fees represent 10.9% of the total settlement value – almost 5 percentage points, or 30% lower than concluded by Professor Rubenstein.

² "Report of the Segal Group to Special Master Perry Golkin"; In re: National Football League Player's Concussion Injury Litigation, MDL 2323; September 12, 2014.

³ As reflected in my April 2017 report, the specific changes in benefits and eligibility implemented in the final Settlement Agreement (from that which was initially presented) have increased the value of the Settlement to Class Members by approximately \$33 million.

Table 1

**Updating Professor Rubenstein's Net Present Value Calculations:
Accounting for Current Participation Rates and Spending Levels**

Estimate	NFL Actuary's Nominal	Net Present Value Using Rubenstein's 4.5% Discount Rate	
		All Attorney's Fees Including Expenses	Attorney's Fees Excluding Expenses
Professor Rubenstein's Calculations			
Monetary Award Fund (MAF)	\$890,000,000	\$537,000,000	\$537,000,000
Baseline Assessment Program (BAP)	\$62,000,000	\$51,000,000	\$51,000,000
Education Fund	\$10,000,000	\$10,000,000	\$10,000,000
Notice Costs	\$4,000,000	\$4,000,000	\$4,000,000
Claims Administration	\$10,000,000	\$6,000,000	\$6,000,000
Attorney's Fee Provision			
Attorney Fees	\$106,800,000	\$106,800,000	\$106,800,000
Expenses	\$5,700,000	\$5,700,000	\$5,700,000
Subtotal, Attorney's Fee Provision	\$112,500,000	\$112,500,000	\$112,500,000
Total	\$1,088,500,000	\$720,500,000	\$720,500,000
Rubenstein's Attorney's Fee Provision (% of Total)	10.3%	15.6%	14.8%
Professor Rubenstein's Calculations Updated for Current Participation Rate			
Monetary Award Fund (MAF)	\$1,297,000,000	\$785,000,000	\$785,000,000
Baseline Assessment Program (BAP) ¹	\$75,000,000	\$61,700,000	\$61,700,000
Education Fund	\$10,000,000	\$10,000,000	\$10,000,000
Notice Costs	\$4,000,000	\$4,000,000	\$4,000,000
Claims Administration ²	\$14,000,000	\$9,000,000	\$9,000,000
Attorney's Fee Provision			
Attorney Fees	\$106,800,000	\$106,800,000	\$106,800,000
Expenses	\$5,700,000	\$5,700,000	\$5,700,000
Subtotal, Attorney's Fee Provision	\$112,500,000	\$112,500,000	\$112,500,000
Total	\$1,512,500,000	\$982,200,000	\$982,200,000
Rubenstein's Updated Attorney's Fee Provision (% of Total)	7.4%	11.5%	10.9%

1.) Includes administrative costs associated with BAP

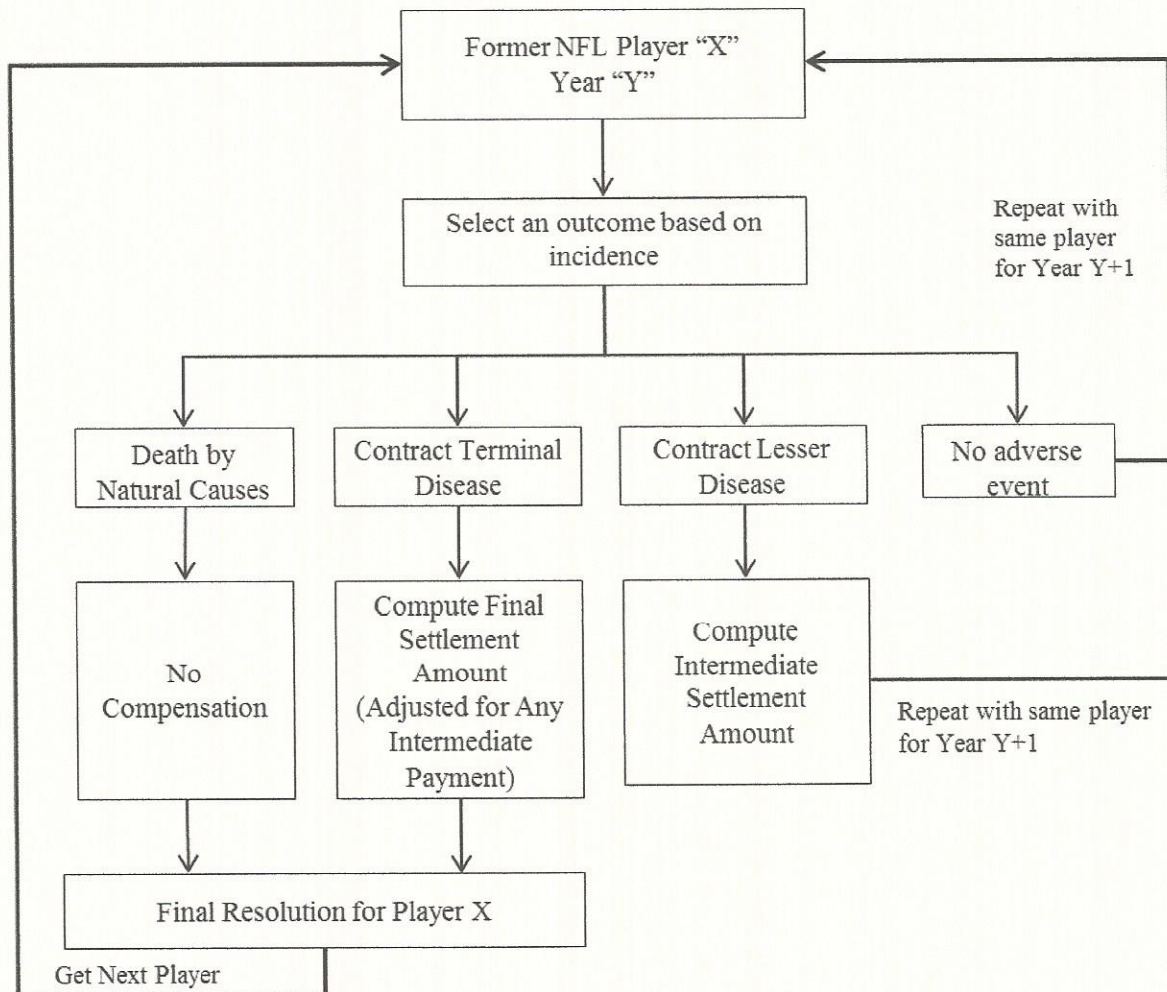
2.) MAF administrative costs only.

Note: Updated Calculations include the effect of increased participation rates and expanded settlement coverage
(see Vasquez Report "An Updated Analysis of the NFL Concussion Settlement", April 10, 2017)

Methodology

The methodology used in my original analysis in 2014 and all subsequent analyses was based on a life cycle forecasting model. The life cycle model looks at each individual in the population of former NFL players and "ages" them, year-by-year, into the future. The population utilized was based upon the anticipated participation rate.

During the aging process, the life cycle model takes each of the former NFL players individually

Figure 1: Life Cycle Methodology Overview

The methodology employed by the NFL's actuaries in their 2014 analysis (and on which Professor Rubinstein relies) similarly depends on and is driven by the participation rate. The more Class Members that participate in the Settlement, the greater the number that are eligible for injury-related compensation and will be compensated according to the Settlement Agreement's terms over the life of the Program.

Updates to 2014 Estimates

The updated value of the NFL Concussion Settlement includes two factors/updated information that changed since my original estimate in 2014. The first includes changes to the settlement. This factor was addressed in my April 2017 report. To summarize, I concluded that the nominal value of the MAF award program would increase by approximately 5%.

The second factor is the participation rate in the MAF program.⁵ Table 2 shows the estimated and

⁵ There was some indication of an increased participation rate at the time I was preparing my April 2017 report.

actual participation rates. The original estimates assumed a 95% participation rate for individuals already filing a claim (and/or represented by counsel) and a 50% participation rate for all other former players. These assumptions yielded an approximately 59% participation rate overall. However, the actual participation rate is approximately 80%. This 36% increase in the participation rate (from 59% to 80%) has a direct increase in the value of the MAF and BAP.

Table 2
Player Registrations as Class Members: Estimated vs. Actual

Player Categories	Original NFL Actuary - 2014 Estimate	Final Registration
Estimated Registered Players ^a	12,200	17,200
Total Class Members ^b	20,500	21,500
Participation Rate	59%	80%

a.) Ex. A; Declaration of Orran L. Brown, Sr. ISO Third Joint Status Report on the Implementation of the Settlement Program; Paragraph 5, (excludes Derivative Claimants.)

b.) Players of NFL affiliate leagues were included as eligible class members in my April, 2017 report

While it is intuitively obvious that higher participation rates will increase the value of the settlement, there is growing substantial evidence that the higher rates are already yielding higher value. Indeed, as shown on Table 3, costs are already on average 57% higher than estimated. This compares to the 39% increase in forecasted nominal costs resulting from the higher participation rates (see Table 1 above). Table 3 compares actual and estimated costs through the first eight months of the settlement.⁶

⁶ The settlement was funded in February of 2017, but the first award amount was not determined until May of 2017 and the first payment was made in June of 2017.

Table 3
Estimated vs. Actual Costs:
Experience Through the First Eight Months

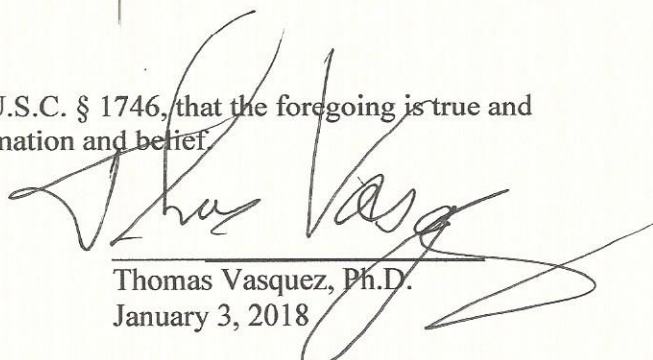
Fund/Expense	May Through December 19, 2017 ^a		
	NFL Actuary Estimates ^b	Actual	Percent Increase
MAF	160,700,000	254,000,000	58%
MAF Admin. Costs	2,000,000	3,600,000	80%
BAP ^c	11,200,000	15,800,000	41%
Total	173,900,000	273,400,000	57%

a.) The settlement was funded in February of 2017, but the first award amount was not determined until May of 2017 and the first payment was made in June of 2017.

b.) Eight months of the NFL Actuary's estimated first full year value for MAF and BAP.
 Start up costs plus seven months of processing for MAF Admin costs

c.) BAP includes exam costs, supplemental benefits, and admin costs.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, based upon my personal knowledge, information and belief.


 Thomas Vasquez, Ph.D.
 January 3, 2018

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323
Case No. 12-md-2323 (AB)

Kevin Turner and Shawn Wooden,
on behalf of themselves and others
Similarly situated,

Civil Action No. 14-cv-0029

Plaintiffs,

vs.

National Football League and NFL
Properties LLC, successor-in-interest
to NFL Properties, Inc.

Defendants.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**JOINDER TO THE RESPONSE OF THE LOCKS LAW FIRM TO THE EXPERT
REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

Zimmerman Reed LLP joins the January 3, 2018, Response of the Locks Law Firm to the Expert Report of Professor William B. Rubenstein [ECF No. 9545]. In particular, Zimmerman Reed joins Locks Law Firm in respectfully requesting that its 20% contingency fee agreements be honored for former players who retained Zimmerman Reed prior to preliminary approval of the Settlement and for whom Zimmerman Reed sought a diagnosis through an independent medical analysis. On March 4, 2016, Zimmerman Reed voluntarily reduced its contingency fee to 20% for all NFL Concussion clients. During that time, Zimmerman Reed expended

significant resources to determine whether clients were suffering from a Qualifying Diagnosis, including some who may never have a compensable diagnosis. These efforts included covering the costs of neuropsychometric testing and neurological consultations, retaining a board-certified neurosurgeon to interview former players and review their medical records, and obtaining and reviewing full medical histories, among other expenses. For these high-risk, resource-intensive clients, Zimmerman Reed requests the Court honor Zimmerman Reed's 20% contingency fee agreements for all of the reasons set forth in the Locks Law Firm Response.

Respectfully submitted,

ZIMMERMAN REED LLP

Dated: January 3, 2018

s/ Charles S. Zimmerman

Charles S. Zimmerman – MN #120054

J. Gordon Rudd, Jr. – MN #222082

Brian C. Gudmundson – MN #336695

Michael J. Laird - MN #0398436

1100 IDS Center, 80 South Eighth Street

Minneapolis, MN 55402

Telephone: (612) 341-0400

Facsimile: (612) 341-0844

Email: Charles.Zimmerman@zimmreed.com

Gordon.Rudd@zimmreed.com

Brian.Gudmundson@zimmreed.com

Michael.Laird@zimmreed.com

ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION

§§§§§

No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

RESPONSE TO THE EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

Lubel Voyles LLP, Provost Umphrey Law Firm LLP, Washington & Associates PLLC, and The Canady Law Firm file their response to the Expert Report and opinions of Professor William B. Rubenstein (“Rubenstein”) as follows:

I. SUMMARY OF THE RESPONSE

The Court should reject Rubenstein’s suggestion to impose a presumptive cap on all contingent fee contracts because, under *US Airways, Inc. v. McCutchen*, 569 U.S. 88 (2013), the Court is without such inherent authority.

Even if the Court decides to presumptively cap contingent fees, the Court should reject Rubenstein's suggested 15% presumptive cap on all contingent fee contracts because Rubenstein reaches the presumptive rate, which is well below the average reasonable contingent fee rates analyzed, using assumed facts that are not correct and a flawed analysis of other cases involving different settlement structures.

Finally, because his Report does not address Rubenstein's conflict of interest, the Court should not consider suggestions or opinions in the Report until and unless interested parties have an opportunity to conduct a Fed. R. Civ. P. 706 deposition and respond to his opinions.

II. ARGUMENT

A. **The Court does not have the inherent authority to limit privately-negotiated contingent-fee agreements.**

In his Report, Rubenstein suggests that the Court “should set a presumptive cap on all contingent fee contracts” (ECF 9526, p. 1 (“Rep.”)). To support this recommendation, Rubenstein first concludes that the Court “possesses the [inherent] authority to assess the reasonableness of each class member’s contingent fee contract with his individually retained attorney” (Rep., p. 14).

In reaching this conclusion, Rubenstein reviewed, *inter alia*, the Affidavit of Professor Charles Silver (ECF 7071-1). In that affidavit, Silver categorically opines that nothing in federal class action rules reduce or eliminate “a lawyer’s right to collect a payment pursuant to a valid engagement contract” (*See* ECF 7071-1, p. 11 (“Silver Affidavit”)).¹ Rubenstein does not mention, discuss, or distinguish Silver’s affidavit about the authority of the Court to alter a contingent fee agreement, though he credits Silver as a “scholar” (Rep., p. 8 n. 32).

Rubenstein is not only silent on Silver’s conflicting view on the Court’s authority, he is also silent on Silver’s contractual and policy bases for opining that the Court is without authority. First, Silver states that reducing fee agreements is actually inconsistent with § 21.1 of the Settlement (*See* Silver Affidavit, p. 17). Then, Silver explains significant negative consequences to a decision to limit contingent fee agreements including, for example, the chilling effect on future class-wide settlements (*See id.*, p. 19). Rubenstein offers no counter to either opinion.

Rubenstein also fails to discuss U.S. Supreme Court authority which, under analogous circumstances, holds that the common-fund doctrine does not provide a court with the inherent authority to trump a contract.² *See US Airways, Inc. v.*

¹ Respondents incorporate Silver’s Affidavit and Resume (ECF 7071-1) by reference.

² Respondents also urge that the Court is without jurisdiction to alter their privately negotiated contracts where, as here, there is no case or controversy regarding their fee contract or whether the client will achieve an award subject to fee. *See Brown v. Watkins*, 596 F.2d 129 (5th Cir. 1979).

McCutchen, 569 U.S. 88, 100 (2013) (confirming “if the agreement governs, the agreement governs”). In *McCutchen*, US Airways attempted to enforce a reimbursement provision within its health benefits plan with McCutchen after McCutchen recovered in tort for injuries negligently caused. McCutchen argued US Airways should be limited to reimbursement of sums double-recovered or common-fund sums. However, writing for the Majority, Justice Kagan held a Court may not use equity to disregard a fee agreement under the theory that a party is unjustly enriched by claiming the benefit of its bargain. *Id.* Although the decision arises in the context of an ERISA plan, the reasoning derives from contract, not statute. In upholding the contract language, the Court rejected the argument that the Court had the inherent authority to do equity that conflicts with the parties’ contract. *Id.* at 99.

Instead, Rubenstein relies heavily upon the Third Circuit authority providing “inherent authority to regulate attorneys appearing before it” (Rep., p.14). Such general authority is neither novel nor disputed. However, none of those cases provide a court with inherent authority to unilaterally rewrite a privately-negotiated contingent fee agreement or are otherwise in conflict with *McCutchen*.

Nor do they actually answer the non-class counsel contingent fee question. For example, in *Dunn v. Porter*, 602 F.2d 1105 (3d Cir. 1995), it was class counsel’s contingent fee that the Court limited. The *Dunn* court did so under Fed. R. Civ. P. 23 because class counsel’s fees were to be paid from the settlement fund. Non-class counsel IRPAs are “on slightly different footing” (Rep., p. 13). That is why Rubenstein acknowledges Rule 23 “has no obvious application to individualized retainer agreements” (Rep., p. 13). *Dunn* is therefore inapposite.

Similarly *Mitzel v. Westinghouse Elec. Corp*, 72 F.3d 414, 417 (3d Cir. 1995) says nothing about a Court’s inherent authority to trump a contract. Instead, the Court determined under a choice of law analysis, that New Jersey law invalidated the contingent fee percentage in a New York contingent-fee contract. The Court’s

authority to limit a fee derived from a state statute, not inherent authority. There are no Third Circuit cases vesting the Court with inherent authority to revise or reduce the non-class counsel individual contingent-fee agreements.

Rubenstein also relies upon *In re Vioxx* and the district court's extensive discussion of the court's authority to limit private contingent-fee contracts. 650 F. Supp. 2d 549, 558 (E.D. La 2009). But, Judge Fallon noted two sources for the court's authority to limit contingency fees: (i) Fed. R. Civ. P. 23 and (ii) the settlement agreement, itself. Here, Rubenstein disclaims any authority from Rule 23, as outlined above, and he says nothing about the Settlement vesting the Court with authority over private contingent fee contracts. But, as mentioned above, Silver does say that the Settlement provides for the private fee contracts, not the revision of same (*See* Silver Affidavit, p. 17, citing § 21.1 of the Settlement).

In sum, the Court should reject Rubenstein's opinion that the Court has the inherent authority to limit non-class counsel contingent fees because it is contrary to U.S. Supreme Court authority, contrary to the Settlement Agreement (for which the Class Members received notice), and represents poor public policy.

B. Assuming authority, the Court should not cap contingent fees at 15%

Even assuming the Court possesses the inherent authority to limit privately-negotiated fee contracts, the Court should not accept Rubenstein's suggestion that the Court place a presumptive 15% cap because the flawed analysis rests upon assumed facts that do not exist. More specifically, Rubenstein uses seven (7) "circumstances" supporting a cap and three (3) measuring sticks to reach 15% and applies them to assumed facts that do not exist. In particular, Rubenstein assumes or concludes—incorrectly—that: (a) "Class Members with [private attorneys] are "paying two sets of lawyers" (Rep., p. 20);³ (b) all private attorneys who have

³ Recall, the common-benefit attorney fees are not paid as a percentage of the recovery. Instead, the NFL will pay common benefit fees over and above the Settlement's benefits (*See* ECF No.

contributed to the common benefit will be separately compensated for that effort (Rep., p. 28, n. 94); and (c) courts in “cases with similar settlement structures” have capped contingent fees at rates in a lower range than suggested (Rep., p. 30).

Rubenstein begins with his seven circumstances which include, for example, the early settlement, the economies of scale, the likely small compensation for the “bulk of the players,” the vulnerability of the class members, and the timing of the contingent fee contracts.⁴ These factors, however, do not support the reduction of individual contingent fee agreements.

For example, the early settlement and the economies of scale factors are actually contradictory. Rubenstein again relies upon *In re Vioxx* as support for reducing IRPA fees “saved” through economies of scale (Rep., p. 20 n. 71). But, economies of scale were achieved in *In re Vioxx* through class counsel conducting discovery and engaging in bellwether trials that the individual attorneys then did not need to conduct. *See* 650 F. Supp. 2d at 552. Here, by contrast, Class Counsel saved individual attorneys very little; Rubenstein himself notes settlement in this case was achieved without discovery or trial (Rep., p 21).

Further, the fact that Class Counsel negotiated a settlement that will pay “about 61% of the players ... \$25,000 - \$50,000” (Rep., p. 23) is not a factor for reducing the private attorneys’ fee contracts. As the players’ recoveries go, so go the private fee contracts. Class Counsel, on the other hand, seeks a percentage of the whole; that is, “the large dollar figures” from the few players receiving them.

6481-1, at 82). Thus, Class Members are not incurring those fees. That is, no class member is paying for any portion of the requested “15.6%” common benefit fee; the NFL will pay whatever is awarded separately with no reduction in benefits to the Class. As such, and contrary to Rubenstein’s assumptions (*see, e.g.*, Rep., pp. 11, 20) there will never be a total fee payment by any Class Member in the 60+% range.

⁴ In this section, and regarding the nature of this action, Rubenstein also notes the Court “deemed” IRPAs unnecessary (Rep., p. 21, citing ECF 6481-1 at 157 (“You do not have to hire your own attorney”)). Of course, the Court-approved Class Notice also advised players that “if you want to be represented by your own lawyer, you may hire one at your own expense.”).

Rubenstein, in comparing Class Counsel to IRPAs to back into a 1/3 fee, forgets that Class Counsel and the IRPAs are not seeking a percentage of the same whole.⁵

Finally, Rubenstein's reliance on the players' cognitive vulnerability for reducing IRPA fee is puzzling in its contradiction.⁶ The private attorneys are compensated solely from the Class Member's recovery. The private attorneys are the only counsel who do not have a conflict with the represented Class Members—if the Class Member achieves no recovery, the attorney achieves no recovery. By contrast, Class Counsel negotiated a separate \$112.5 fund for its fees. These same private attorneys owe separate ethical duties to the represented Class Members regarding their capacity. These vulnerable Class Members have never needed individual counsel more than they do now, when Class Counsel seek to exhaust the fee fund and begin taking 5% of each Class Member's recovery. As such, the Court should not, by capping an IRPA fee, create a disincentive to the Class Member's only completely-aligned advocate.⁷

⁵ According to Rubenstein, the 15% cap is designed to ensure Class Members do not pay more than 1/3 in fees and expenses (Rep., p. 1). To arrive at that 1/3 figure, Rubenstein assumes all attorneys will receive the "15.6%" common benefit fee, as well as a 15% fee under their contingent fee contracts. But, attorneys who do not receive any common benefit fee would receive less than half the typical contingent fee arrangement.

⁶ For one, it is difficult to reconcile Rubenstein's claim that these men have "physical and mental vulnerabilities" potentially rendering them incapable of negotiating a power of attorney (Rep., p. 24) with the suggestion that they are/were, independent of counsel, capable of filing their own lawsuit, evaluating and comprehending the 100-plus page Settlement agreement, filing, if necessary, objections to the Settlement or appeals, distinguishing differences between pre- and post-effective date diagnoses, funding qualified physician evaluations, being able to adequately respond to the claims office, file and fund appeals, fund future exams not covered by the NFL, *etc.*

⁷ A 15% cap may actually harm many of the class members who are not currently qualified for monetary award, playing right into the NFL's hands. A number of those players will lose representation altogether, and others will not have attorneys willing to fund MAF physician exams or appeals under the Settlement. It is reported to currently cost approximately \$4,000 to \$5,000 for the MAF approved physician exam along with separate neuropsychological protocol. Class members who undergo the one free BAP exam but do not qualify for a monetary award will be required to self-fund future MAF physician examinations approved under the Settlement as they cannot qualify for benefits by seeing any physician of their own choice.

Rubenstein then moves to the three measuring sticks” to glean a 15% cap; but, like the seven circumstances, these measuring sticks do not support the proposed presumptive cap. Those measuring sticks are: (1) Third Circuit factors; (2) data on contingent fee agreement levels in this case;⁸ and (3) “data from other cases.” The Third Circuit factors Rubenstein cites are from the four-part test for judicial review of contingent fees set forth in *McKenzie Cost., Inc. v. Maynard*, 823 F.2d 43, 45 (3d Cir. 1987): (1) the attorney must demonstrate the fee is reasonable; (2) the standard is reasonableness “applying principles of equity and fairness;” (3) analysis of circumstances existing at the time of the fee agreement; quality of work performed; results obtained; and attorney contribution; and (4) whether changed circumstances have rendered the fee contract unfair at the time of its enforcement.

In three pages, Rubenstein analyzes these factors though he has not seen any fee contracts and none of the IRPAs have had an opportunity to meet the burden he applies. Rubenstein concludes, based upon anecdotal “data” in this case that the IRPAs, individually, are to presumptively lose their contracted-for fee or a portion thereof because they failed to “demonstrate” their fee is reasonable. The data suggests, for example, that IRPA “generally did not ‘substantially contribute’ to ‘the results obtained’ given the aggregate resolution of the case” (Rep., pp. 27-28).⁹ But,

⁸ Regarding this “measuring stick,” Rubenstein does not opine that fees between 20 and 30% are unreasonable, unethical, or illegal. Instead, he notes the rates have decreased overtime and states the “most recent” rates are between 20-25% (Rep., 29). But, says Rubenstein, the “actual market rate” is likely 5% lower, *i.e.*, 15-20%, for the reason that those signing contracts after July 7, 2014 would know about the potential 5% set aside (*Id.*). That, however, makes no sense. Rubenstein’s graph (Rep., p. 29) has 13 data points representing contracts executed after mid-July 2014, when the 5% set-aside was disclosed. The rates range from 20% to 33 1/3%. Therefore, to the extent the 5% set-aside impacted the “market rate,” it is reflected in the 20-33% range. Moreover, Rubenstein offers no explanation for treating attorneys that invested significant time and resources working on this matter before any settlement was announced the same as lawyers that signed up clients after the settlement.

⁹ Rubenstein also suggests IRPAs work going forward will be easy, requiring little time or expense in simply “filling out claims forms” (*See* Rep., pp. 22-23 and n. 78). But, he does not set forth his familiarity with the claims process or the difficulties being faced by the Class and the Claims

the IRPAs were neither hired nor permitted to advance the cause of the aggregate. In other words, this factor would be a reason to reduce every private lawyer in every class action. And, Rubenstein forgets that if the IRPA contributed to “the aggregate,” the Settlement contemplated compensation from the fee fund, not the represented Class Member. Rubenstein’s flaw in logic here probably arises from his belief that all counsel contributed to the common benefit are going to be compensated from the fee fund. But, private attorneys who have contributed to the common benefit of the Class are not currently forecast to be fully and separately compensated for that effort. Co-Lead Class Counsel has excluded the common benefit contributions of, in particular, respondent Lubel Voyles. Moreover, Co-Lead Class Counsel has unilaterally recommended to the Court that the fees requested by all other common benefit counsel be reduced.

Finally, Rubenstein turns to “data from other cases.”¹⁰ Of the thirteen cases set forth by Rubenstein, three set the low range: *In re Copley Pharm, Inc.*, 1 F. Supp. 2d 1407, 1417 (D. Wy. 1998); *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915, 925 (E.D. Ky. 1986); and *In re Rio Hair Naturalizer Prod. Liab. Litig.*, No. MDL 055, 1996 WL 78051 (E.D. Mich. Dec. 20, 1996). Without these three cases, the range of IRPA fees is a low of 18% and a high of 33.5%.¹¹ Not one of the three cases is, as described by Rubenstein, of “similar settlement structures.” None contain a fee fund for common benefit fees. In fact, the *In re Rio Hair Naturalizer Prod. Liab.*

Administrator. On this point, Respondents incorporate by reference the discussion on pages 7-9 of ECF 9545, which documents the “complex, slow, and difficult” claims process. According to the Monetary Award Claims Report (as of 1/2/18), sixty seven (67) claims have been paid out of 1569 submitted (far less than the approximately 665 that were forecasted to be paid in year 1, *see* 6168-7 at 4). Although Rubenstein references in footnote 78 authority discussing the potential relevance of the percentage of claims found valid with and without the assistance of counsel, he provides no data or analysis from this claims process.

¹⁰ Rubenstein presents these cases in chart form through exhibit D (ECF 9526, p. 92). Respondents are unable in the 10 pages allotted to demonstrate expressly how different they are from this case.

¹¹ Rubenstein’s proposal of 15% is about 40% below the average from the six cases he states have “similar settlement structures” (D1) and about 27% below the other cases he considered (D2).

Litig. Court concluded that the 5% fee awarded was reasonable only because the settlement structure was “limited fund”—that is, the Defendant had no further assets. 1996 WL 78051 *20 (holding that “although a normal 33 ⅓% or 40% contingency fee arrangement in most cases might be deemed reasonable, in a limited fund class action involving a large number of claimants, this otherwise reasonable percentage often proves to amount to an unreasonable fee”). Even the higher fees do not provide the apples-to-apples fee structure the Court should require as legal authority to rewrite every privately-negotiated fee contract. And, not a single case analyzed, not a single capped fee, was tested through the appellate court—in fact, some were agreed fees. As such, they provide no reliable foundation to impose a cap.¹²

In short, the Court itself could not find that a party failed to “demonstrate” entitlement to a fee without holding a fee hearing or permitting evidence. But, as a judicial consultant, Rubenstein uses the Third Circuit factors as applied to data gathered anectdotally from the PACER website to suggest the Court hold that all private contingent fee contracts are presumptively “no longer reasonable.” This is the essence of the denial of due process.

C. The Court should not consider suggestions or opinions in the Report until and unless interested parties conduct a Fed. R. Civ. P. 706 deposition.

Lubel Voyles previously pointed out (ECF 8350, p. 7 responding to Order ECF 8310) that Rubenstein’s resume discloses conflicts of interest in this case; at a minimum, he has served as an expert consultant for one on the parties. When the Court appointed Rubenstein (ECF 8372) and ordered that “any party may depose ...

¹² Rubenstein acknowledges the cases on which he relies support a higher IRPA fee, but concludes Class Counsel’s common benefit fee request is a “significant limiting factor” (Rep., p. 31 and n. 99). According to Rubenstein, steering committees in the other cases were typically awarded less than 10% (*Id.*). And, he confirmed common benefit fees as low as 5-6% typically paid for all of the aggregate work that went into generating and implementing the entire settlement (*Id.* at 38). In fact, Rubenstein’s report provides a number of factors that call into question the 15.6% common benefit fee request (*see, e.g.*, Rep., pp. 43-45 and ns. 132, 134).

Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman
Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

/s/ Matthew C. Matheny
Matthew C. Matheny
Texas State Bar No. 24039040
mmatheny@pulf.com
Jacqueline Ryall
jryall@pulf.com
PROVOST UMPHREY
LAW FIRM, L.L.P.
Attorney at Law
Post Office Box 4905
Beaumont, Texas 77704
(409) 835-6000
(409) 838-8888 - Fax Number

/s/ Mickey Washington
Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

/s/ James C. Canady

James Carlos Canady

Texas State Bar No.: 24034357

THE CANADY LAW FIRM

5020 Montrose Blvd., Suite 701

Houston, TX 77006

Telephone: (713) 284-5204

Facsimile: (713) 284-5250

Email: ccanady@canadylawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on January 3, 2018.

/s/ Lance H. Lubel

Lance H. Lubel

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Case No. 2:123-md-02323-AB MDL

Hon. Anita B. Brody

Michael Adams,
*on behalf of himself and others similarly
situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 14-cv-29-AB

National Football League and NFL Properties,
LLC, successor-in-interest to NFL Properties,
Inc.

Defendants.

NOTICE OF JOINDER

Robins Cloud LLP, which represents over 150 players in this action, hereby join the two motions for reconsideration of the Court's December 11th Order filed last week. *See* ECF Nos. 9535 and 9536. These motions ask that Court allow Plaintiffs the opportunity to depose Professor William B. Rubinstein and request an extension of 60 days to respond to his report. In addition, Robins Cloud LLP, hereby joins in the Responses to the Expert Report of Professor William B. Rubenstein, specifically ECD Nos. 9549 and 9554. For the reasons set forth in those motions, we agree that this is the proper course forward.

Dated: January 3, 2018

Respectfully submitted,

Attorney Ian Cloud, Robins Cloud, LLP

By: /s/ Ian P. Cloud
Ian P. Cloud
State Bar No. 00783843
Robins Cloud, LLP
2000 West Loop South. 22nd Floor
Houston, TX 77027
Tel: (713) 650-1200
Fax: (713) 650-1400
icloud@robinscloud.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing Notice of Change of Firm Affiliation was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: January 3, 2018

/s/ Ian P. Cloud
Ian P. Cloud

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 12-md-2323 (AB)

MDL No. 2323

Kevin Turner and Shawn Wooden, on
behalf of themselves and others similarly
situated,

Plaintiffs,

Hon. Anita B. Brody

v.

National Football League and NFL
Properties LLC, successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**CLASS COUNSEL PODHURST ORSECK, P.A.'S RESPONSE TO THE EXPERT
REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

Pursuant to the Court's Order (ECF No. 9527), Class Counsel Podhurst Orseck, P.A. ("Podhurst") respectfully submits this response to the Expert Report of Professor William B. Rubenstein, which was publicly filed on December 11, 2017 (ECF No. 9526) ("Report").

Professor Rubenstein's Report presents a thorough analysis of the applicable legal authorities and is clearly the product of considerable effort. Yet, in several crucial respects, the Report's legal analysis is untethered to the unique facts of this action and premised on inaccurate assumptions. Specifically, as our colleagues have correctly explained, the Report erred in treating the common-benefit fee as a tax against the recovery of class members (ECF Nos. 9545

at 3-5; 9549 at 1-3; 9552 at 1-3); erred in relying on outdated actuarial estimates to calculate the common-benefit fee's percentage of the total settlement value (ECF Nos. 9545 at 6-7; 9552 at 3-5); and inaccurately assumed that the Monetary Award process requires minimal time and expense expenditures (ECF Nos. 9545 at 7-9; 9552 at 6-8).¹ These significant flaws in the Report undermine its central recommendation to set a presumptive 15% cap on all contingent fee contracts.

The Report's recommendation is also difficult to square with Third Circuit precedent, which cautions that "*the courts should be loathe to intrude into a contractual relationship between an attorney and client,*" cogently reasoning that

[w]here . . . the lawyer and client have entered into a contractual fee agreement prior to the litigation, the considerations stressed above argue in favor of *deference to the parties' contractual arrangement*. The strong judicial reluctance to enforce the terms of a judicially fashioned bargain upon the parties now presses in favor of honoring the express terms of the fee agreement. The equities are also altered. If the client has entered the contract freely and advisedly, his claim of unfairness is reduced in force. The risk of unfairness to the attorney, in contrast, is sharply increased. For *it cannot be said that the attorney is receiving more than he bargained for at the outset of litigation*. He may well have relied upon the fee contracts in deciding to undertake the litigation at the outset. Unduly close review of the allocation of risks in a contract entered into before the outcome of the litigation was known or knowable might also discourage the prosecution of risky, but meritorious lawsuits.

Dunn v. H.K. Porter, 602 F.2d 1105, 1111-12 (3d Cir. 1979) (emphasis added). Notwithstanding this precedent, the Report relies on contingency fee percentages in post-Effective Date contracts

¹ The Report contains a number of additional inaccurate assumptions, including its pure speculation that law firms representing hundreds of players should be able to provide services less expensively due to economies of scale and that clients of such firms will "likely get less individualized attention." (ECF No. 9526, ¶ 40.) This speculation finds no support in the actual experience of numerous firms representing hundreds of players, including Class Counsel, which have hired additional personnel to address the extraordinary demands of this litigation. Many, if not all, of these assumption errors could have been avoided had Professor Rubenstein reached out to Class Counsel to investigate the Report's factual underpinnings.

to arrive at a reasonable fee percentage for contracts that *pre-date* preliminary approval of the settlement. (ECF No. 9526, ¶ 36.) This analysis is precisely the type of “[u]nduly close review of the allocation of risks in a contract entered into before the outcome of the litigation was known or knowable” that the *Dunn* court cautioned might “discourage the prosecution of risky, but meritorious lawsuits.” 602 F.2d at 1112.

Podhurst Orseck has proactively reduced the contingency fee percentage in its retainer agreements in this action to 25%. Even under the Report’s flawed framework in which the common-benefit fee percentage is added to the contractual percentage, the total fee paid by Podhurst’s clients will not exceed 36% of the value of the settlement, using an updated actuarial estimate based on actual participation rates (ECF No. 9552-1 at 8 (estimating that common-benefit fee percentage is 10.9% of updated settlement value)). This total fee is already below the percentage that clients agreed to pay, and is in line with the range that courts have deemed reasonable in other mass-tort and class settlements. *See, e.g., In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, No. MDL 1203, 2011 WL 722217, at *2 (E.D. Pa. Feb. 25, 2011); *In re Zyprexa Prod. Liab. Litig.*, 424 F. Supp. 2d 488, 496 (E.D.N.Y. 2006); *Martens v. Smith Barney, Inc.*, No. 96-CIV-3779, 2003 WL 21543506, at *8 & n.3 (S.D.N.Y. July 9, 2003).

For these reasons and those articulated in our colleagues’ responses, the Court should reject the Report’s recommendation to set an across-the-board, presumptive 15% cap on all contingent fee contracts, regardless of when they were entered into.²

² As there appears to be no dispute regarding the common-benefit expenses recoverable by Class Counsel, which total almost \$6 million and were advanced several years ago, the resolution of disputed fee issues should not delay the payment of such expenses to Class Counsel from the Attorneys’ Fees Qualified Settlement Fund.

Dated: January 3, 2018

Respectfully submitted,

PODHURST ORSECK, P.A.

SunTrust International Center
One S.E. 3rd Ave, Suite 2300
Miami, FL 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382

By: /s/ Steven C. Marks
STEVEN C. MARKS
Fla. Bar. No. 516414
Email: smarks@podhurst.com
STEPHEN F. ROSENTHAL
Fla. Bar No. 0131458
Email: srosenthal@podhurst.com
RICARDO M. MARTÍNEZ-CID
Fla. Bar No. 383988
Email: rmcid@podhurst.com
MATTHEW P. WEINSHALL
Fla. Bar No. 84783
Email: mweinshall@podhurst.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2018, I caused the foregoing Notice of Change of Address, to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for CM/ECF in the above-captioned matter.

By: /s/ Steven C. Marks
STEVEN C. MARKS

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

Hon. Anita B. Brody

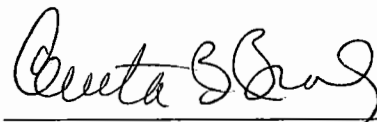
THIS DOCUMENT RELATES TO:
ALL ACTIONS

ORDER

In the process of administering the Class Action Settlement Agreement, the Court finds it is necessary to appoint counsel for *pro se* class members. The Court appoints Dennis R. Suplee, Esquire, to represent these *pro se* Settlement Class Members where there has been a demonstrated need for legal counsel.

Furthermore, Magistrate Judge David R. Strawbridge, in his sole discretion, may appoint Mr. Suplee in specific cases where the Settlement Class Member has a demonstrated need for legal counsel in connection with attorney fee disputes.

Mr. Suplee shall submit requests for compensation to Special Master Jo-Ann M. Verrier.



ANITA B. BRODY, J.

1/8/18

Copies via ECF

JA8476

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**REPLY OF PROFESSOR WILLIAM B. RUBENSTEIN
TO RESPONSES TO EXPERT REPORT**

1. By Order dated September 14, 2017, this Court appointed me to serve as an expert witness on attorney's fees and directed me to report:

(1) on whether the Court has the authority to and should order a cap on the percentage that any class member in this case would be obligated to pay his attorney and if so, what that cap should be and how that cap should be implemented and (2) on the reasonableness of requiring class members to contribute a portion of their recoveries to a common benefit fund, whether 5% is an appropriate portion, and whether this process will result in any counsel being over-compensated (e.g., double-dipping).¹

¹ ECF No. 8376 at 2. All citations to ECF document pages in this filing are to the PDF page number.

2. On December 3, 2017, I submitted a Report that, after setting forth several factual assumptions, stated and explained two opinions: (1) that the Court possesses the authority to cap contingent fees and should set a presumptive 15% cap on all contingent fee contracts; and (2) that the Court should not order a 5% set-aside of class members' recoveries.²

3. By Order dated December 11, 2017, the Court directed interested parties to file responses by January 3, 2018.³ On that date, 13 briefs were filed by 17 law firms with registered settlement class member clients.

4. Based on these thoughtful and constructive comments, I make the following updates to my initial report.

I.
FACTUAL ASSUMPTION:
11% CLASS COUNSEL FEE

5. My Report's factual section distinguished Class Counsel's \$112.5 million fee and expense request from the individually retained plaintiffs' attorneys' (IRPAs) contingent fee contracts and reported that the former constituted 15.6% of the total net present value of the settlement.⁴ In response, Co-Lead Counsel Seeger Weiss has submitted an updated actuarial report reflecting higher participation rates, claim payments, and expenses.⁵ The increased expected value of the settlement reduces the \$112.5 million fee and expense request to 11.5% of the total net present value of the settlement, 10.9% of which is the fee component.⁶ I therefore

² ECF No. 9526 (hereafter “Rubenstein Report”).

³ ECF No. 9527.

⁴ Rubenstein Report at 3–13.

⁵ ECF No. 9552-1 at 4-12.

⁶ ECF No. 9552-1 at 8.

now assume that if the Court were to grant Class Counsel's full \$112.5 million fee and expense request, their fees will constitute approximately 11% of the total value of the settlement.

II. 22% CONTINGENT FEE CAP

6. My Report found that a one-third contingent fee best approximated the risk and work that the two sets of attorneys (Class Counsel and IRPAs) undertook in this case.⁷ I accordingly recommended a 15% cap on contingent fee contracts given Class Counsel's 15.6% proposed class action fee.⁸ Now that Class Counsel's fee request constitutes 11% of the class's likely recovery, I recommend that the Court set a cap on contingent fee contracts at 22% of the

⁷ Some firms argued that I arbitrarily started with this 33% number and worked backwards from it. *See, e.g.*, ECF No. 9549 at 1. However, my Report identified with great specificity the reasons that a 33% fee is appropriate in the circumstances of this case, Rubenstein Report at 21–29, in the context of the known fee agreements at issue here, *id.* at 29–31, and in relationship to caps in other cases, *id.* at 31, and I stand by those conclusions.

⁸ Nearly every firm that commented on my Report argued that Class Counsel's class action fee has no bearing on the class members' recoveries and hence should not be calculated as a factor in the total fee each class member is paying. A simple analogy helps demonstrate why I continue to believe that Class Counsel's contingent fees must be counted as part of the class's recovery regardless of how the settlement is structured. Assume a client hired a lawyer to pursue a tort claim on a one-third contingent fee basis. After some litigation, the lawyer calls the client and says, "Good news, the defendant has agreed to settle the case and you will be getting \$1.1 million. Better yet," she continues, "After we settled your case, we negotiated my fee and the defendant separately agreed to pay me \$700,000 directly, with not a penny of that coming out of your \$1.1 million." At that point, the client might think, "Wait a minute. It appears we are getting \$1.8 million in total and my 2/3 share should be \$1.2 million and your 1/3 share \$600,000, per our retainer agreement." And of course the client would be right. The point of the analogy is not to suggest malfeasance by Class Counsel in this case; the analogy simply drives home the point that, in assessing the reasonableness of the fees being paid by individual class members, Class Counsel's fees must be considered a component of the class's relief. The facts that the parties have set class members' individual recovery levels net of those fees, that the fees were (partially) negotiated separately from the class's recovery, and/or that the NFL has agreed to pay all claims made in the settlement, in no way alter the point, nor are the parties' efforts to distinguish the key Third Circuit precedents convincing.

class member's MAF payment.⁹ The higher cap also acknowledges the many responses to my Report that argued that a 15% cap underestimated the IRPAs' risks and workload.¹⁰ The Court should implement the IRPA cap by directing the Claims Administrator to apportion each MAF award between the class member and IRPA according to (a) the terms of the Court's final fee order or (b) the terms of the contingent fee contract, if the contract reflects a rate lower than an imposed cap.

III.

2% SET-ASIDE ONLY AS LAST RESORT TO FUND FUTURE WORK

7. My Report found that Co-Lead Counsel had not demonstrated the need for a 5% set-aside at present or at the time it was initially proposed (in conjunction with the second Settlement Agreement).¹¹ In response to my Report, Co-Lead Counsel Seeger Weiss described the extensive work that it has been required to undertake (in large part) because of the changed dynamics created by the second Settlement Agreement: namely, removal of a total cap on the settlement created an incentive for the NFL to contest payments, globally and individually, and

⁹ The two numbers obviously add up to 33%. However, as I pointed out in my initial report, *id.* at 12 n.42, the math is not this precise because Class Counsel's fee is a percentage of the class member's gross award, while the IRPA fee is a percentage of the class member's award net of Class Counsel's fee. An IRPA fee of 25.2% of the class member's recovery net of Class Counsel's fee would yield a total fee of 33% of the class member's gross recovery. The 22% figure is more transparently obvious to class members and sufficient in the context of this case.

¹⁰ A number of firms supported my conclusions that risks and work diminished as the case progressed, Rubenstein Report at 25–26, and at least one (The Locks Firm) suggested the possibility of varying the cap according to the time at which the retainer agreement was signed. ECF No. 9545 at 9–11. In theory, that approach is sensible, but I worry that in practice it may be administratively complicated by two factors: (a) verification of the date of the initial retainer agreement and (b) the concern that since many class members have changed lawyers, leaving the initial lawyer with a potential lien on the ultimate recovery, it could create a complex situation wherein one lawyer had a lien at one rate while the second lawyer has a contract at a lower rate. In any case, my revised recommendation of a 22% cap meets the Locks Firm's suggestion that it be relieved of a 15% cap and entitled to a 20% cap for earlier signed clients. *Id.* at 9–10.

¹¹ Rubenstein Report at 36–39.

that new pressure has generated significant work for Co-Lead Counsel.¹² Other circumstances have similarly generated somewhat unforeseeable additional work for Co-Lead Counsel.¹³

8. I credit Co-Lead Counsel Seeger Weiss's account of the efforts that it has undertaken on behalf of the class throughout this lawsuit. The firm has obviously provided invaluable service to the class. It deserves to be rewarded and, accordingly, seeks a fee allocation nearly four times its own lodestar.¹⁴ Without diminishing Seeger Weiss's efforts in any way, for the reasons set forth in detail in my Report,¹⁵ I stand by my conclusion that the NFL's \$112.5 million fee and expense payment should be sufficient to fund past, present, and future work, so long as certain safeguards are put in place.¹⁶ Specifically, if \$85.5 million in fees and \$6.2 million in expenses (or \$91.7 million) were paid at present, at least \$22.5 million¹⁷

¹² ECF No. 9552 at 7–9. In reporting this argument, I am not judging the NFL's actions. It is understandable that it would need to be more vigilant once the settlement's total cap was removed. Whether those efforts have been over-aggressive, as some have alleged, *see, e.g.*, ECF No. 9545 at 7–9, is irrelevant to this reply – my point is simply that these efforts have created more work for both Co-Lead Counsel and for IRPAs.

¹³ *See, e.g.*, ECF No. 9552 at 8 (discussing “the extent to which third-party lenders and claims services providers” have “emerge[d] to profit off Class Members’ back”).

¹⁴ ECF No. 8447-1 at 2.

¹⁵ Rubenstein Report at 36–46.

¹⁶ *Id.* at 44–46. Co-Lead Counsel Seeger Weiss agrees with my Report's recommendation that future payments be made on a straight lodestar basis without a multiplier. *Compare id.* at 45, *with* ECF No. 9552 at 9 n.16. Co-Lead Counsel Anapol Weiss agrees with my recommendation that the hourly billing rates should be disciplined in some manner. *Compare* Rubenstein Report at 45, *with* ECF No. 9548 at 1–2.

¹⁷ These three numbers add up to \$114.2 million, which is the amount that had accumulated in the relevant funds as of October 10, 2017. *See* ECF No. 8447-1 at 2. That number is higher now as interest has continued to accumulate for the subsequent months – and will until Counsel's fees are paid.

could be set aside in an interest-bearing account that should pay out \$1,000,000/year for 65 years, leaving nothing at its conclusion.¹⁸

9. If the Court is concerned that \$1,000,000/year may be insufficient to ensure Class Counsel's future fees, I recommend that it next turn to the NFL (or possibly other litigants¹⁹). The Settlement Agreement states in no uncertain terms that the NFL will pay Class Counsel's fees²⁰: \$112.5 million is simply the point at which the NFL begins to protest. Further, the Settlement Agreement notes – as it must – that the final amount due is the amount that the Court deems reasonable.²¹ Accordingly, the Court could authorize Co-Lead Counsel to update its initial fee petition to encompass (for example) an additional \$10 million contribution by the NFL

¹⁸ My Report recommended paying \$90 million of \$112.5 million at present, Rubenstein Report at 43, but in doing so, it did not distinguish fees from expenses. Here I disaggregate the two and recommend paying 100% of the expenses and just under 80% of the fees at present. As I stated in my report, “such a bifurcation would award Class Counsel 80% of its aggregate fee now, even though the class is receiving far less than that amount of its total MAF recoveries at present.” *Id.* Indeed, as of January 16, 2018, according to its report at the settlement's website (attached here as Exhibit A), the Claims Administrator had authorized roughly \$257 million in MAF payments, while Class Counsel's actuary predicts \$1.297 billion in total MAF payments, ECF No. 9552-1 at 8; this means that class members have been awarded less than 20% of their expected recovery. Given this disjuncture, if the Court were concerned that future fees may exceed \$1,000,000/year, it would not be inequitable to allocate Class Counsel less than \$85.5 million (or 80% of its fee request) at present, thereby leaving more for the future.

¹⁹ Co-Lead Counsel Seeger Weiss has invested significant time on the assignments issue, for example. *See* note 13, *supra*. The Court may consider whether it is appropriate to tax Seeger Weiss's fees against the adverse parties in those proceedings.

²⁰ ECF No. 6481-1 at 82–83 (“[T]he NFL Parties shall pay class attorneys' fees and reasonable costs.”).

²¹ *Id.* at 83 (“Ultimately, the award of class attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.”); *see also* ECF No. 9552 at 11 n.18 (Co-Lead Counsel Seeger Weiss's agreement that, “Of course, given its familiarity with the work already performed and efforts that will be required over the long haul, the Court can always take the initiative to direct the NFL to augment the AFQSF for the purpose of compensating implementation-related common benefit work”).

to an interest-bearing fund.²² According to the parties' actuarial calculations, that fund should yield \$450,000 in interest on an annual basis. If Class Counsel's annual lodestar exceeded the \$1,000,000 in its own fund, it could then petition for use of interest in the NFL fund. All unused interest would revert to the NFL, as would the \$10 million principal at the end of the 65-year settlement. This structure would create an incentive for the NFL to provide a check on the expenditures of Co-Lead Counsel going forward and, in the context of the full settlement, would be a minute adjustment to the NFL's overall obligations. The NFL would, of course, be entitled to oppose the updated initial fee petition from Class Counsel, though given its familiarity with Co-Lead Counsel's many efforts and the relatively minimal amount of money involved, perhaps it would not do so.²³

10. If necessary as a last resort, the Court should direct the Claims Administrator (a) to withhold 2% of any MAF payment from unrepresented class members or 2% of the contingent fee of a represented player's IRPA and (b) to place these monies in a common benefit fund. As roughly \$257 million in awards have been authorized to date, this set-aside would create an initial fund of more than \$5 million, which would yield more than \$230,000 in interest each year.

²² This approach complies with the Settlement Agreement's statement that, "the NFL Parties' obligation to pay class attorneys' fees and reasonable costs is limited to those attorneys' fees and reasonable costs ordered by the Court as a result of the initial petition by Class Counsel," and the further limitation that, "The NFL Parties shall not be responsible for the payment of any further attorneys' fees and/or costs for the term of this Agreement." ECF No. 6481-1 at 83.

²³ Co-Lead Counsel Seeger Weiss worries that an additional round of briefing might forestall fee payments indefinitely. ECF No. 9552 at 11 n.18. This is an understandable concern in that many of the plaintiffs' lawyers in this case – Class Counsel and IRPAs – have been litigating for more than half a decade without any award to date, notwithstanding the success of their efforts. If significant delay is a real concern, the Court might consider an interim fee award, while enabling the NFL the opportunity to respond to the updated initial fee petition.

A 2% set aside would also generate another \$20 million over 65 years,²⁴ or more than \$300,000/year assuming award distributions are spread evenly over time. These funds would be a final backstop if Class Counsel's fund and the interest in the NFL's fund were both exhausted in a given year. Any unused funds in this account would be returned to class members or their IRPAs on some regular basis. This approach would leave IRPAs with a contingent fee of 20%, with some or all of the remaining 2% available to be recovered if not used by Class Counsel. This, too, would therefore create an incentive for the IRPAs and *pro se* class members' representative²⁵ to provide a check on the expenditures of Co-Lead Counsel going forward.

11. The Court's task is precarious: if not enough monies are set aside for future work, the class may be disadvantaged, but if too much money is set aside, it may create incentives for lawyers to make work and get paid (on the "if you build it, they will come" theory). My recommendations aim to balance these competing concerns by identifying both sources of nearly \$2 million per year for future funding and mechanisms to keep spending in check.

Respectfully submitted,



William B. Rubenstein

Dated: January 19, 2018

²⁴ As previously noted, *see* note 18, *supra*, Co-Lead Counsel Seeger Weiss's actuary estimates total MAF payments of \$1.297 billion. As \$257 million in awards have been authorized to date, that leaves about \$1 billion yet to be awarded, 2% of which is \$20 million.

²⁵ As the class's counsel is adverse to the class members as to the use of these monies, I recommend that the newly appointed advocate for *pro se* class members be charged with safeguarding these monies for them. *See* ECF No. 9561 (appointing Dennis R. Suplee to represent *pro se* settlement class members "where there has been a demonstrated need for legal counsel").

EXHIBIT A

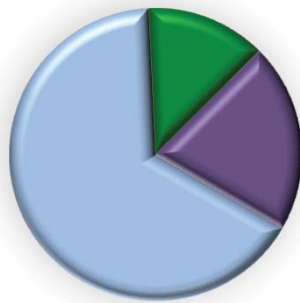


CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

Monetary Award Claims Report (As of 1/16/18)

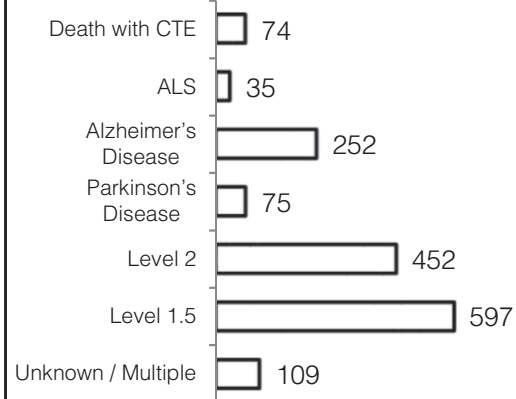
	Table of Contents	Page No.
A.	Summary Data	
1.	Chart 1: Claims Submitted	2
2.	Chart 2: Qualifying Diagnosis Alleged for Monetary Award Claims	2
3.	Chart 3: Qualifying Diagnosis Date	2
4.	Chart 4: Notices Issued on Monetary Award Claims	2
5.	Chart 5: Payable Claims Summary	3
6.	Table 1: Status of Appealed Monetary Award Claims	3
7.	Table 2: Reasons in Notices of Denial Issued on Monetary Award Claims	4
8.	Chart 6: Claim Profile of All Settlement Class Members	4
B.	Derivative Claimants	
1.	Table 3: Derivative Claimant Notices Issued	5
2.	Table 4: Notice of Derivative Claimant Award Determination Detail	5
3.	Table 5: Reasons in Notices of Denial of Derivative Claim	5
C.	Payable Claim Details	
1.	Table 6: Deductions Listed on Notices of Monetary Award	6
2.	Table 7: Monetary Award Payments	7

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**Monetary Award Claims Report
(As of 1/16/18)****CHART 1: CLAIMS SUBMITTED
(TOTAL: 2,013)****MONETARY AWARD CLAIMS: 1,594**
DERIVATIVE CLAIMS: 419

■ Retired Player
1,327 (66%)

■ Representative Claimant
267 (13%)

■ Derivative Claimant
419 (21%)

**CHART 2: QUALIFYING DIAGNOSIS
ALLEGED FOR MONETARY AWARD
CLAIMS****CHART 3: QUALIFYING DIAGNOSIS DATE**

■ Pre-Effective Date: 1,241 ■ Post-Effective Date: 114 ■ Unknown: 239

Death with CTE



ALS



Alzheimer's



Parkinson's



Level 2



Level 1.5



The data in Chart 3 reflects Qualifying Diagnoses dates for which Claim Packages have been submitted. The total number of BAP Qualifying Diagnoses and MAF exams will be greater than the number of claims.

**CHART 4: NOTICES ISSUED ON MONETARY AWARD CLAIMS*
(TOTAL: 1,048)**

628

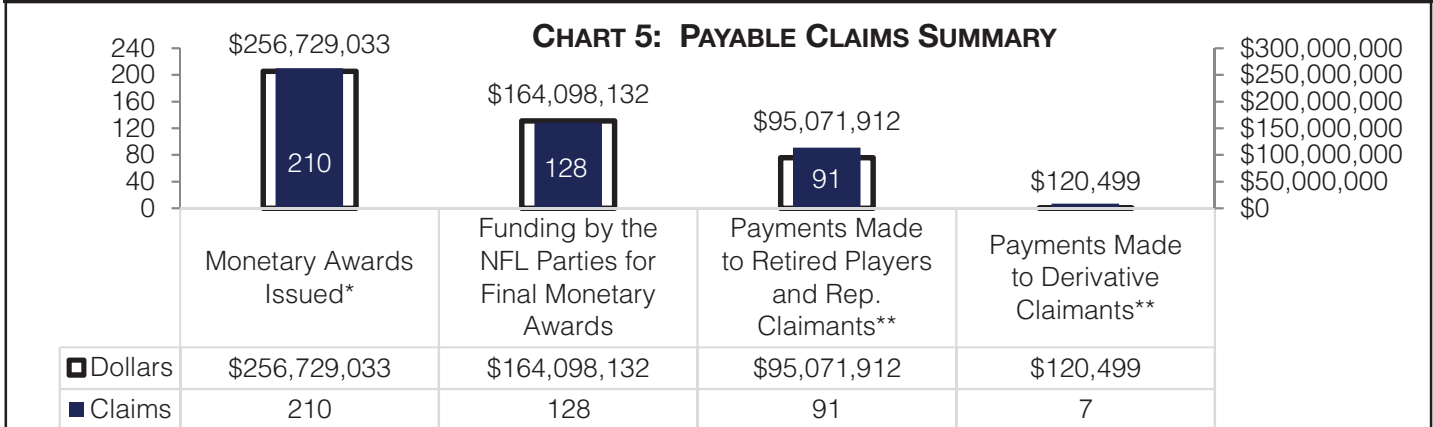
210

71

139

	Payable	Denied	Closed After Audit	Request for Additional Documents
■ TOTAL	210	71	139	628
■ Not Appealed	176	50		
■ Appealed	34	21		

* Chart 4 provides a unique count of all Monetary Award claims that have received a notice. Claims receiving multiple notices are counted only once in Chart 4 based on the most recent notice issued.

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**Monetary Award Claims Report
(As of 1/16/18)**

* This figure reflects the Monetary Award totals prior to any application of holdbacks for potential Derivative Claimants, common benefit fees, liens and determinations on appeals.

** The difference between the dollars funded by the NFL and the dollars paid out to Settlement Class Members ("SCMs") represents amounts withheld for Potential Derivative Claimant Awards, common benefit fees and liens and could still be paid to the SCM.

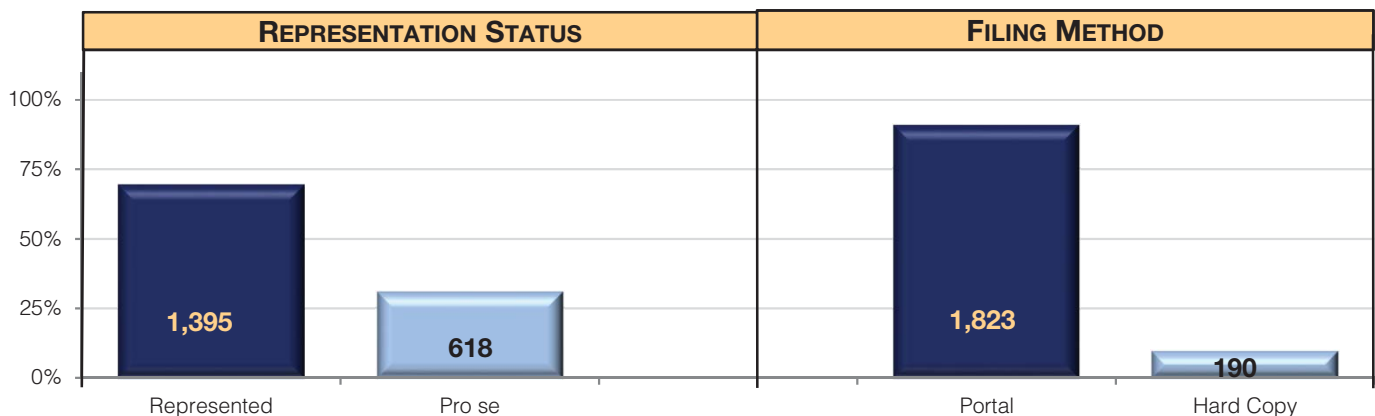
TABLE 1		STATUS OF APPEALED MONETARY AWARD CLAIMS		
	Status***	SCM Appeals	NFL Appeals	Total
A.	Payable Claims	5	29	34
1.	Appeal Filed and Awaiting Fee Payment or Filed Appeal Notice	0	0	0
2.	Appeal Alert Issued - No Response Yet	2	16	18
3.	Appellee Opposition Memo Received	0	6	6
4.	With Special Masters for Decision	2	2	4
5.	Result Upheld on Appeal	1	4	5
6.	Result Overturned on Appeal	0	1	1
B.	Denied Claims	21	0	21
1.	Appeal Filed and Awaiting Fee Payment or Filed Appeal Notice	2	0	2
2.	Appeal Alert Issued - No Response Yet	7	0	7
3.	Appellee Opposition Memo Received	4	0	4
4.	With Special Masters for Decision	0	0	0
5.	Result Upheld on Appeal	8	0	8
6.	Result Overturned on Appeal	0	0	0
C.	TOTAL APPEALS	26	29	55

*** Co-Lead Class Counsel has filed statements in nine of the Appeals listed in Table 1. These Appeals are distributed across multiple statuses in the Appeals Process.

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**TABLE 2 REASONS IN NOTICES OF DENIAL ISSUED ON MONETARY AWARD CLAIMS**

	Reason	Notices*	Appeals
1.	Death with CTE Claims	5	2
	(a) Death occurred after Final Approval	2	
	(b) Death occurred before 7/7/14 but QD was after Final Approval	1	
	(c) Death Betw. 7/7/14 & 4/22/15; QD > 270 Days from Death	1	
	(e) Appeals Advisory Panel Denial - Inappropriate Physician	1	
	(f) Appeals Advisory Panel Denial - Qualifying Diagnosis	1	
2.	ALS Claims	0	0
3.	Alzheimer's Disease Claims	31	11
	(a) Appeals Advisory Panel Denial - Inappropriate Physician	6	
	(b) Appeals Advisory Panel Denial - Qualifying Diagnosis	30	
4.	Parkinson's Disease Claims	3	0
	(a) Appeals Advisory Panel Denial - Inappropriate Physician	3	
	(b) Appeals Advisory Panel Denial - Qualifying Diagnosis	2	
5.	Level 2 Claims	15	4
	(a) Appeals Advisory Panel Denial - Inappropriate Physician	5	
	(b) Appeals Advisory Panel Denial - Qualifying Diagnosis	13	
6.	Level 1.5 Claims	17	4
	(a) Appeals Advisory Panel Denial - Inappropriate Physician	0	
	(b) Appeals Advisory Panel Denial - Qualifying Diagnosis	17	
7.	TOTALS	71	21

*Claims receiving a Denial Notice with multiple Denial Reasons will be counted once for each reason in the sub rows of Table 2

CHART 6: CLAIM PROFILE OF ALL SETTLEMENT CLASS MEMBERS

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

TABLE 3	DERIVATIVE CLAIMANT NOTICES ISSUED		
	Notice Type	Total Notices	
1.	Notice of Derivative Claim Package Submission Deadline	105	
2.	Derivative Claim Package Receipt Notice	410	
3.	Notice of Denial of Derivative Claim	2	
4.	Derivative Claimant Incompleteness Notice	0	
5.	Derivative Claimant Challenge Determination Notice	21	
6.	Notice of Derivative Claimant Award Determination	31	
7.	TOTAL	569	

TABLE 4	NOTICE OF DERIVATIVE CLAIMANT AWARD DETERMINATION DETAIL		
	Type	Number	Amount
1.	Full Award (one Derivative Claimant takes all)	10	\$223,195
2.	Equal Allocation (by Claims Administrator to multiple Derivative Claimants)	21	\$122,128
	(a) Pending	4	\$56,600
	(b) Final	17	\$65,528
3.	Post-Allocation Objection (state law allocation by Claims Administrator to multiple Derivative Claimants)	0	\$0
	(a) Pending	0	\$0
	(b) Final	0	\$0
4.	Post-Appeal (by Special Master to multiple Derivative Claimants)	0	\$0
	(a) Pending	0	\$0
	(b) Final	0	\$0
5.	Court Determination	0	\$0
6.	TOTALS	31	\$345,323

TABLE 5	REASONS IN NOTICES OF DENIAL OF DERIVATIVE CLAIM	
	Reason	Notices
1.	Duplicate	0
	(a) Of Pending Claim	0
	(b) Of Previously-Paid Claim	0
	(c) Of Previously-Denied Claim	0
2.	No Timely or Proper Registration	0
	(a) By Retired NFL Football Player	0
	(b) By Derivative Claimant	0
3.	Retired NFL Football Player is Opt Out	0
4.	Untimely Derivative Claim Package	0
5.	Deceased Derivative Claimant	2
6.	Retired NFL Football Player Claim Denied	0
7.	TOTAL	2

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**TABLE 6 DEDUCTIONS LISTED ON NOTICES OF MONETARY AWARD**

	Deductions by Confirmed Qualifying Diagnosis	Number	Amount
1.	Grid Amount	210	\$316,146,333
	(a) Death with CTE	53	\$90,946,667
	(b) ALS	20	\$79,450,000
	(c) Alzheimer's Disease	78	\$68,986,000
	(d) Parkinson's Disease	37	\$46,610,000
	(e) Level 2.0 Neurocognitive Impairment	7	\$14,767,333
	(f) Level 1.5 Neurocognitive Impairment	15	\$15,386,333
2.	Deductions for Offsets	67	\$59,417,300
	(a) Death with CTE	15	\$20,338,400
	(b) ALS	5	\$13,040,000
	(c) Alzheimer's Disease	27	\$9,320,700
	(d) Parkinson's Disease	16	\$14,168,200
	(e) Level 2.0 Neurocognitive Impairment	2	\$2,100,000
	(f) Level 1.5 Neurocognitive Impairment	2	\$450,000
3.	Deductions for Derivative Claimant Awards	107	\$1,478,243
	(a) Death with CTE	39	\$526,691
	(b) ALS	11	\$415,000
	(c) Alzheimer's Disease	31	\$298,000
	(d) Parkinson's Disease	14	\$101,079
	(e) Level 2.0 Neurocognitive Impairment	3	\$47,173
	(f) Level 1.5 Neurocognitive Impairment	9	\$90,300
4.	Withholding for Common Benefit Fees	210	\$12,807,540
	(a) Death with CTE	53	\$3,504,079
	(b) ALS	20	\$3,344,750
	(c) Alzheimer's Disease	78	\$2,968,365
	(d) Parkinson's Disease	37	\$1,617,036
	(e) Level 2.0 Neurocognitive Impairment	7	\$631,008
	(f) Level 1.5 Neurocognitive Impairment	15	\$742,302
5.	Withholding for Liens	104	\$53,019,248
	(a) Death with CTE	17	\$10,605,140
	(b) ALS	15	\$21,662,830
	(c) Alzheimer's Disease	40	\$9,705,644
	(d) Parkinson's Disease	19	\$4,961,130
	(e) Level 2.0 Neurocognitive Impairment	5	\$3,661,386
	(f) Level 1.5 Neurocognitive Impairment	8	\$2,423,118

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**TABLE 7 MONETARY AWARD PAYMENTS**

	Status by Confirmed Qualifying Diagnosis	Number	Amount
1.	Notice of Monetary Award	210	\$256,729,033
	(a) Death with CTE	53	\$70,608,267
	(b) ALS	20	\$66,410,000
	(c) Alzheimer's Disease	78	\$59,665,300
	(d) Parkinson's Disease	37	\$32,441,800
	(e) Level 2.0 Neurocognitive Impairment	7	\$12,667,333
	(f) Level 1.5 Neurocognitive Impairment	15	\$14,936,333
2.	Paid Claims	98	\$95,192,411
	(a) Death with CTE	36	\$39,215,772
	(b) ALS	14	\$36,535,411
	(c) Alzheimer's Disease	25	\$11,587,935
	(d) Parkinson's Disease	12	\$4,720,065
	(e) Level 2.0 Neurocognitive Impairment	1	\$1,503,525
	(f) Level 1.5 Neurocognitive Impairment	3	\$1,509,203
	(g) Derivative Claimants	7	\$120,499
3.	Payment in Progress (Claims Currently in the Funding/Disbursement Process)	60	\$62,828,000
	(a) Death with CTE	12	\$16,034,000
	(b) ALS	4	\$9,810,000
	(c) Alzheimer's Disease	29	\$18,706,400
	(d) Parkinson's Disease	13	\$16,094,267
	(e) Level 2.0 Neurocognitive Impairment	1	\$1,050,000
	(f) Level 1.5 Neurocognitive Impairment	1	\$1,133,333
4.	Ready to be Included on the Next Monthly Funding/Disbursement List (10th of every month)	0	\$0
	(a) Death with CTE	0	\$0
	(b) ALS	0	\$0
	(c) Alzheimer's Disease	0	\$0
	(d) Parkinson's Disease	0	\$0
	(e) Level 2.0 Neurocognitive Impairment	0	\$0
	(f) Level 1.5 Neurocognitive Impairment	0	\$0
5.	Not Ready to be Included on the Next Monthly Funding/Disbursement List (appeal option still available to SCM, Class Counsel, and/or NFL Parties; hold in place)	59	\$98,829,121
	(a) Death with CTE	5	\$15,358,495
	(b) ALS	2	\$20,064,589
	(c) Alzheimer's Disease	24	\$29,370,965
	(d) Parkinson's Disease	12	\$11,627,468
	(e) Level 2.0 Neurocognitive Impairment	5	\$10,113,808
	(f) Level 1.5 Neurocognitive Impairment	11	\$12,293,797

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:
ALL ACTIONS

ORDER

By Order dated September 14, 2017 (ECF No. 8376), the Court appointed Professor William B. Rubenstein as an expert witness on attorneys' fees and asked Professor Rubenstein to submit a report on two sets of issues. By Order dated December 11, 2017 (ECF No. 9527), the Court granted leave to file responsive pleadings. On January 19, 2017, Professor Rubenstein filed a reply (ECF No. 9571), which contained updates to his initial report.

Accordingly, interested parties may file a surreply to respond to any updates contained in Professor Rubenstein's reply, limited to 5 pages in length, **on or before Tuesday, January 30, 2018.**

s/Anita B. Brody

ANITA B. BRODY, J.
1/23/18

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE

No. 2:12-md-02323-AB

MDL No. 2323

PLAYERS' CONCUSSION INJURY
LITIGATION

Hon. Anita Brody

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,
Plaintiffs,

Civ. Action No. 14-00029-AB

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

Notice of Motion requesting that the Court issue an Order directing class counsel, sub-class counsel and the additional Law Firms who provided common benefit work on behalf of the settlement class to negotiate with one another in good faith, in an attempt to reach a universal recommendation that may be presented to the Court for consideration in determining the appropriate allocation of the common benefit fund.

1. The facts of this case are very well known to the Court and to the interested parties and there is no need to reiterate the procedural history of the litigation.
2. Under the terms of the amended Settlement Agreement submitted to the Court under date of February 13, 2015, the NFL parties agreed to pay reasonable attorney fees and expenses to Plaintiff attorneys who performed work that benefited the Settlement Class, so long as the fee application would not exceed \$112.5 million.

3. On February 13, 2017, co-lead counsel petitioned the Court for expenses totaling \$5,682,779.18 and fees totaling \$106,817,220.62.
4. Subsequent to the February 13, 2017 filing, co-lead counsel Christopher Seeger, Esquire, was asked by the Court to submit his recommendation as to the allocation of common benefit fees and expenses for the 24 law firms that worked to provide a benefit to the global settlement class.
5. On October 10, 2017, the Court provided all interested parties the ability to file a response to Mr. Seeger's recommended fee allocation. Responses by the interested Parties were filed with the Court on or before October 27, 2017. Thirteen (13) briefs were filed by seventeen (17) law firms opposing co-lead counsel's recommendation.
6. Separate and apart from Mr. Seeger's recommendation and the responses to that recommendation, the Court appointed Professor William B. Rubenstein to serve as an expert witness on attorney fees and directed Professor Rubenstein to opine on contingent fee percentages and the reasonableness of requiring class members or their attorneys to contribute monies towards a common benefit fund for future administrative and legal work on the 65-year settlement term. The Court *did not* request Professor Rubenstein to provide a recommendation on the independent issue of common benefit fees, so any global recommendation from all interested Parties could only benefit the Court in determining the appropriate fee allocation.
7. No party to this litigation can deny the importance of open communication, fair discussion and the power of negotiating rather than using judicial resources to determine the fee allocation issue.
8. Through judicial discretion, the Court has the ability to order the interested Parties who are entitled to common benefit funds to convene in an attempt to present to the Court a unified recommendation regarding the allocation of fees. This alternative could diminish the likelihood that a Party or Parties would contest the Court's final determination of the allocation. The negotiation would also provide the Court with a unified recommendation from all interested Parties.
9. Given that the substantive litigation in the matter has been ongoing since 2011 and has involved the time and efforts of many attorneys, it only seems fair and reasonable that the attorneys who performed work on behalf of the global settlement class have the opportunity to sit down in order to facilitate discussion amongst them, possibly eliminating barriers to a resolution through good faith negotiations, allowing for a

unified fee allocation recommendation to be submitted to the Court. This can only assist the Court in making a final determination.

10. Negotiation is the first method of choice for problem-solving and trying to reach a mutually acceptable agreement on the fee allocation will provide the Court with a unified recommendation, hopefully limiting future litigation and possible delay.
11. By ordering the interested parties to negotiate in good faith, there becomes a real possibility of the Parties reaching a global resolution with regard to the fee allocation issue. This alternative dispute option has no downside and can only promote judicial efficiency and decrease any delay that might occur due to any one law firm who is unhappy with the Court's final determination of the allocation. No attorney in the litigation should be subjected to any further delay in the payment of expenses and the fees they incurred for working so diligently over the course of the past six (6) years.
12. In reviewing both Mr. Seeger's fee recommendation, as well as the responses from the seventeen (17) law firms, it is evident that many of the firms are overly confident in their positions and naturally have a basic tendency towards self-serving interpretation with regard to the value of their work. A Court ordered negotiation will also provide for face to face discussions between the Parties and this environment may in fact lead to a fair, reasonable and global recommendation of the fee allocation to the Court, further promoting judicial efficiency.
13. Conventional negotiations that have been Court-ordered have shown to be productive and often times negate the Court from having to decide the issue at hand. This is evident by looking back at the Court's recommendation that the NFL Parties and Plaintiffs settle the matter instead of risking an unfavorable ruling by the Court on preemption. Additionally, by recommending that the Parties negotiate a universal recommendation with regard to the fee allocation issue, each party would have an incentive to compromise in order to reach a final resolution and avoid the possibility of further delay.
14. In summary, I respectfully request that the Court direct all interested Parties who have been approved for common benefit funds to gather and negotiate in good faith in order to reach a global recommendation on the allocation of common benefit funds.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of January 2018

/s/ Craig R. Mitnick, Esquire

CRAIG R. MITNICK, Esquire

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS’ CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323 Hon. Anita B. Brody
Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated</i> , <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc. <p style="text-align: right;">Defendants.</p>	Civ. Action No.: 14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	Hon. Anita B. Brody

**SURREPLY OF THE NATIONAL FOOTBALL LEAGUE AND
NFL PROPERTIES LLC TO THE REPLY OF PROFESSOR
WILLIAM B. RUBENSTEIN TO RESPONSES TO EXPERT REPORT**

On January 23, 2018, this Court issued an order granting interested parties the right to file a surreply to respond to Professor William B. Rubenstein’s updates to his initial report on attorneys’ fees issues (Doc. No. 9576). The National Football League and NFL Parties (the “NFL Parties”) take no position at this time with respect to Professor Rubenstein’s report except to state that the NFL Parties would oppose any future amended petition by Co-Lead Class Counsel that seeks fees and expenses exceeding \$112.5 million.

Dated: January 30, 2018

Respectfully submitted,

/s/ Brad S. Karp

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

Brad S. Karp

Bruce Birenboim

Lynn B. Bayard

1285 Avenue of the Americas

New York, NY 10019-6064

Tel: (212) 373-3000

Email: bkarp@paulweiss.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Case No. 12-md-2323 (AB)

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and others
similarly situated,*

Hon. Anita B. Brody

Plaintiffs,

National Football League and
NFL Properties LLC,
successor-in-interest to NFL Properties,
Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**SURREPLY OF X1LAW TO THE EXPERT REPORT OF
PROFESSOR WILLIAM B. RUBENSTEIN**

In accordance with this Court's January 23, 2018 Order [ECF No. 9576] granting leave, X1Law respectfully submits this Surreply to Professor William B. Rubenstein's Reply [ECF No. 9571] to the Responses to his Expert Report of (the "Report").

Professor Rubenstein's Updates

In his Reply, Professor Rubenstein provided three updates to his Report:

- If the Court were to award Class Counsel the entire \$112.5 million fee and expense request, their fees would amount to approximately 11% of the total value of the settlement.
- In light of the estimated 11% Class Counsel fee, the Court should set a cap on all contingent fee contracts at 22% of the class member's MAF payment.
- A 2% set-aside only as a last resort.

See Reply, ECF No. 9571, p. 2.

11% Class Counsel Fee and 22% Contingent Fee Cap

X1Law disagrees with Professor Rubenstein's analysis and recommendation that the Court should set a presumptive 22% cap on all contingent fee contracts. As previously argued¹ in numerous responses: (a) the common benefit fee is separate from individually retained plaintiff's attorneys ("IRPAs") contingency fees; (b) the analysis presupposes arbitrary numbers; and (c) a presumptive cap on IRPA contingent fee contracts weakens the "watchdog" role IRPAs play as contemplated by the Settlement Agreement.

2% Set Aside Only as a Last Resort to Fund Future Work

X1Law agrees with Professor Rubenstein that a 2% set-aside should only be ordered as a last resort, with the caveat that Professor Rubenstein provided good reasons why a 2% set-aside should never be resorted to. Professor Rubenstein recommends that a 2% set-aside of Retired Player awards should only be ordered as a last resort. However, ordering a 2% set-aside, even as a last resort, will necessarily result in taking 2% of all unrepresented Retired Players' awards and 2% of IRPA contingency fees. Professor Rubenstein offered a number of alternatives that could be put in place ahead of a 2% set aside which, if implemented, would ensure that a 2% set aside never becomes necessary.

The purpose of a 2% set-aside is to pay Co-Lead Class Counsel's ("CLCC") fees for additional work after the Settlement. According to the January 3, 2018 Declaration of Chris Seeger, one of the disputes with the NFL requiring his firm's representation is the "generally consistent" language in the Settlement Agreement:

Another dispute with the NFL has been over what diagnostic criteria satisfy the pre- Effective Date "generally consistent" language in Section 6.4(b) and Exhibit A-1 of the Settlement Agreement relating to Qualifying Diagnoses for purposes of demonstrating Level 1.5 and Level 2 Neurocognitive Impairment. *See* ECF No. 6481-1, at 37, 106-08. The NFL has argued that the impairment levels that drive

¹ The extensive briefing by numerous parties in response to Professor Rubenstein's report addresses in detail the Class Counsel fee assumption, separate nature of common benefit fees versus contingency fees and cap on contingent fee agreements, and need not be repeated.

the BAP, which are narrow, should guide, whereas I maintain that a more generous and inclusive standard, the “dementia” diagnosis, should guide. We have submitted statements to the Special Masters on this issue in support of individual Class Members in connection with appeals of monetary award determinations.

See ¶6 Seeger Declaration, ECF No. 9552-1.

The “generally consistent” standard is critical to Retired Players with Dementia Diagnosis Claims. In support of its argument for the entire 5% set-aside or future attorney’s fees [*see* ECF No. 9552, p.11], CLCC cites its opposition to the NFL regarding the “generally consistent” standard in the Settlement Agreement. *See* ¶6 Seeger Declaration, ECF No. 9552-1. However, this exact issue was raised throughout numerous filings² aimed at debunking the NFL’s unsupported position that the BAP impairment requirements (as opposed to requirements “generally consistent” with the BAP requirements per the Settlement Agreement) guide pre-effective date diagnosis. Each time, CLCC rigorously opposed and sided with the NFL. *See*, CLCC & NFL Joint Response, ECF No. 8432.

CLCC is now first making the same arguments (that were raised last August) on a case by case basis to the Special Master. At the time, CLCC filed a joint motion with the NFL requesting an extension of time [ECF No. 8302] to respond to a motion [ECF No. 8267] addressing failure to recognize “generally consistent” in the Claims Process. Instead, CLCC addressed predatory lending³ claims directly to the Court, and the Court entered orders that precluded certain practices and provided Class Wide relief. At the September hearing regarding predatory practices, CLCC indicated that the Settlement was “working perfectly” and on other occasions indicated that the settlement process was straightforward and simple. It is not clear whether CLCC collaborated with other Class Counsel to contemporaneously investigate and address the “generally consistent” issue while CLCC pursued predatory practices.

² *See* ¶¶13, 14 ECF No. 8267, p. 5.

³ Ensuring that Retired Players get paid is, at minimum, equally as important as policing predatory lending practices and potentially usurious no-recourse loan transactions.

CLCC and the NFL further successfully advocated against having the Court rule on the Claims Administration issues. *See* Order Denying, ECF No. 8882. Rather than efficiently oppose the attempt to eliminate the “generally consistent” standard in the Settlement Agreement in one fell swoop, CLCC took the position that it must be case by case basis through the Claims Process. Now, CLCC cites the need to oppose the NFL’s position on the “generally consistent” standard in support of CLCC’s assertion that a 5% set-aside from unrepresented Retired Players’ awards and IRPA fees is necessary. However, it does not make sense to take any percentage of Retired Players’ award money and deposit it into a fund earmarked to pay CLCC’s fees to do repeatedly what it could have done once, but opposed.

CLCC’s opposition to the earlier motions and refusal to address attempts to eliminate the “generally consistent” standard resulted in a clogged Claims Process, delayed payment to Retired Players and emboldened the attack on terms that are good for Retired Players:

- No Class-Wide ruling has been made precluding attacks on the “generally consistent” standard, leaving the Settlement Agreement susceptible to constant assault. One example is Updated FAQ No. 68, which adds a requirement for neuropsychological testing and deletes the “generally consistent” standard contained in § 1.3(b) of Settlement Agreement Exhibit, ECF No. 6481-1, p. 107. The changes create new hurdles for Retired NFL Players to meet to obtain a Monetary Award, and do not conform to the Settlement Agreement. *See* ECF No. 9557 for comparison of FAQ 68 to § 6.3(b). The purpose of the FAQ is to assist Retired Players, not elimination of the “generally consistent” standard, which only hurts Retired Players.
- The absence of a Class-Wide ruling has further left the NFL unchecked, and within its rights, to repeatedly challenge the plain language of the Settlement Agreement akin to the Claims Administrator’s arguments [*see* ECF Nos. 8432-1, p.15-16 and 8432-2, p.4, 6-7].
- The January 29, 2018 Monetary Award Claims Report, which is attached as **Exhibit A**, indicates that there have been 2,040 Claims Submitted and 110 Paid Claims. To date, only there are only 110 Paid Claims.
- Of the mere 110 Paid Claims, only 4 are “Dementia Diagnosis” Claims (Level 1.5 and Level 2.0 Neurocognitive Impairment). Specifically, 1 is a Claim for Level 2.0 Neurocognitive Impairment and 3 are Claims for Level 1.5 Neurocognitive Impairment.

- Of the Submitted Claims, more than half (1,054) are Dementia Diagnosis Claims (Level 1.5 and 2.0 combined). Despite that Dementia Diagnosis Claims make up more than half the Submitted Claims, only 22 have been approved and only 4 have been marked as Paid Claims.
- The data from the Claims Administrator, indicating that only 4 of 1,054 Dementia Diagnosis Claims have been marked as Paid Claims, demonstrates how effectiveness of the attack on the “generally consistent” standard – the standard under which Dementia Diagnosis Claims outside the BAP are to be evaluated.

If left unchecked, the log jam of claims and attempts to revise the Settlement Agreement will continue to prevent Retired Players from being paid.

CLCC’s opposition [*see* ECF No.8432] to motions aimed at addressing wholesale the issues with the Claims Process contributed to the above facts. Now, CLCC address the “generally consistent” issues piecemeal, and requests that the Class Members and IRPAs pay a full 5% set-aside, creating a multi-million dollar fun to pay CLCC’s fees for future work. However, as Professor Rubenstein points out, CLCC is adverse to the Class with respect to the 2% set-aside [*see* ECF No. 9571, p.8]. Future attorney’s fees to pay CLCC should be pursued from the NFL [*see* ECF No. 9571, p.6,], not the Retired Players or their IRPAs. There is no need for a 2% set-aside, it would only promote inefficiency and is unfair to the Retired Players.

Conclusion

X1Law respectfully requests that the Court refrain from adopting an across the board presumptive 22% cap on all contingent fee contracts and deny any all set-asides. Instead, the Court should allow IRPA contingent fee contracts to remain in place and allow CLCC to apply to the NFL for payment of additional fees for future work.

Dated: January 30, 2018

Respectfully Submitted,

Patrick J. Tighe
Attorneys for Plaintiffs/Movants
X1LAW, P.A. f/k/a Patrick J. Tighe, P.A.
721 US Highway 1, Ste 121
North Palm Beach, FL 33408
Phone: 561-537-3319
Fax: 561-537-7193
Pat@X1LAW.com
Florida Bar No. 568155

Attorneys for Plaintiffs/Movants
LOREN & KEAN LAW
7111 Fairway Drive, Suite 302
Palm Beach Gardens, FL 33418
Phone: 561-615-5701
Fax: 561-615-5708
mstjacques@lorenkeanlaw.com
Florida Bar No. 0783471

s/ Michael St. Jacques
Michael G. St. Jacques, II

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2018, the foregoing document was electronically filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

LOREN & KEAN LAW

s/ Michael St. Jacques
MICHAEL G. ST. JACQUES, II

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

**IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
LITIGATION**

§
§
§
§
§
§
§
§

No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO: §
ALL ACTIONS**

**SURREPLY RESPONDING TO THE REPLY OF PROFESSOR WILLIAM B.
RUBENSTEIN TO RESPONSES TO EXPERT REPORT (ECF 9571)**

Lubel Voyles LLP, Provost Umphrey Law Firm LLP, Washington & Associates PLLC, and The Canady Law Firm respectfully file this Surreply to Professor William B. Rubenstein's Reply to Responses to Expert Report (ECF 9571), as invited by the Court's January 23, 2018 Order.

Professor Rubenstein's task in this fee dilemma is untenable. He is to assist the Court in crafting a fee award that will do no harm to the former NFL Players. But, a presumptive cap on private fee contracts, a disincentive to representation, unnecessarily hurts former NFL Players now that we know (a) nuances and flaws in the Settlement favor the NFL; (b) the NFL is contesting claims and payments, at a higher rate than Class Counsel anticipated,¹ and; (c) the actual participation (monetary awards made) is breath-takingly low—so low as to call into question every statistical measure the parties and the Court relied upon, because none of those past measures reflect today's reality. For these reasons, the private attorneys who represent players via contracts should not have their fees capped.

¹ For the most part, the delay and fight over claims has been caused by the NFL. The NFL has executed a strategy to oppose and delay claims, particularly Level 1.5, Level 2, and Alzheimer's claims. The NFL has reinterpreted the Settlement, amended the Settlement to suit its desires, and refused to agree on reasonable measures that will streamline the process. Instead, every claim must be litigated on a case by case basis. No longer does co-lead counsel Christopher Seeger announce that the players do not need a lawyer. Never has competent counsel for the players been more vital.

The attorneys' fee dispute has percolated for almost a year. Co-Lead Class counsel's position on fees, a race against settlement awards, is "pay me now and pay me later." Specifically, pay me now a fee and a performance bonus coincidentally exhausting the present \$112.5 fee fund; and pay me later by setting aside 5% of every dollar awarded to any former NFL player in the future to pay the fees I anticipate incurring.² The private lawyers' solution is to (a) pay reasonably incurred Class fees now but no performance bonus until and unless success, through Settlement implementation, is a reality rather than a statistical fiction; and **thereby** (b) grow the fee fund for the benefit of players' future legal needs; and, **as a further result**, (c) postpone an unnecessary set-aside from the players' private counsel fees that will create a disincentive to represent and deprive those players of individualized advocacy when it is needed most.

Professor Rubenstein was not tasked with deciding when Class Counsel is paid or how much, though he also questioned whether an invested fee fund would better serve Class Members under the circumstances. But, on task, Professor Rubenstein tried to make the ultimate math work for the players based upon assumptions about what the Court might do. However, Professor Rubenstein's math ignores the elephant in the room: The value of the Settlement depends upon NFL players' claims qualifying for payment, which the early data shows is not happening.

Recall that Professor Rubenstein's mathematical fee-equation does not involve dollars and cents; it is a percentage of the whole.³ But, Professor Rubenstein has fallen

² The current posture of the class counsel common benefit fee request is set forth in Co-Lead Counsel's proposed allocation, which provides more than 75% of the award to Seeger Weiss and its co-counsel, none of whom (on information and belief) represent any individual players. Were the Court to follow Seeger Weiss' request, a very small percentage of the common benefit fee award will go to firms who actually represent player-claimants, and the majority of the award will go to those who do not.

³ He begins with a 33.33% total fee. *See* ECF 9571, p. 3 n. 7. Then, Professor Rubenstein assumes, that the Court will award Class Counsel what is requested - \$112.5MM. But, Professor Rubenstein must translate that \$112.5 into a percentage. Using an arbitrary present "value of the settlement" Professor Rubenstein has, in a single paragraph, revised downward the assumed percentage to Class Counsel from 15.6% to 11.5%. Professor Rubenstein still assumes that Class Counsel will

into the same trap that Class Counsel has set for the Court by their premature request for fees: Professor Rubenstein has used as “the whole” or the “value of the settlement” *as projected*, without regard to whether those projections being achieved in reality. Because the data shows the projections are not being achieved, the “value of the settlement” that Class Counsel uses and that Professor Rubenstein uses is Monopoly money.

The Court does not need to guess about whether the projections about the “Whole” are fact or fiction. Comparing, by compensable category, the pre-settlement forecasted payments for Year 1 with the Actual Year 1 payments, the disconnect is clear:

Category (% incidence such category represents of the Whole, <i>see</i> ECF 6423-21, (Ex. JJ, p. 5)	NFL Year 1 Forecasted Payments (ECF 6168 Ex. F)	Actual Year 1 Payments (ECF 9571, Ex. A, p. 7)
ALS (.5 %)	17 Claims, \$42.7 million	14 Claims, \$36.5 million
CTE (1.3%)	51 Claims, \$50.24 million	36 Claims, \$36.215 million
Parkinson’s (.4 %)	14 Claims, \$7.1 million	12 Claims, \$4.72 million
Alzheimer’s (48%)	153 Claims, \$70.655 million	25 Claims, \$11.59 million
Level 2 (49%)	111 Claims, \$38.64 million	1 Claim, \$1.5 million
Level 1.5 (0% as all assumed in Level 2)	319 Claims, 33.64 million	3 Claims, 1.5 million
Total Claims Paid	665 Claims	Less than 100
Total Amount Paid	\$242.9 million	\$95.192 million

receive \$112.5 – the denominator is unchanged. Instead, the math is based entirely upon a new, higher “value of the settlement.” The value of the settlement is based upon an “updated actuarial report from Co-Lead Counsel Seeger Weiss” opining that “[p]articipation rates in the final, as-approved Settlement program substantially exceed those initially projected . . . and, as a result the anticipated Net Present Value is expected to be substantially greater than previously projected.” ECF 9552-1, p. 2. The numerator, the value of the settlement, has gone from \$1,088,500,000 to \$1,512,500,000. So, as the argument goes, Class Counsel is really only seeking 11.5%. And, so, to keep the former NFL players from paying more than 33.33%, private fee contracts can be presumptively capped at 22%, not 15%.

Moreover, and in in event, there is no basis to link a cap on contract rates to the Class Counsel fee award. One is separate from the other, and the Court wisely uncoupled the two when it uncapped Settlement. The fee award will not subtract from how much will go to players in this Settlement, and reducing contract rates will have an adverse effect on the representation of the players by experienced and able lawyers, who are now vital.

The problem is not merely that less than half of what was projected has been paid. The chart tells so much more. ALS, CTE, and Parkinson’s claims, which together represent 2.2% of the total claims (“the Whole”) forecast, are somewhat on par with the forecast. But the other claims—those representing 97% of the Whole—depart from the forecast by more than 95%. Stated differently, if Alzheimer’s, Level 2 and Level 1.5 claims are approved and paid at this rate going forward, then the projections of the value of the settlement are off by 95%. And, if the value of the settlement is off by 95%, but Class Counsel is paid \$112.5, the only victors in this Settlement are the NFL and Class Counsel.

The Court also need not guess about why these projections are off. Co-Lead Class Counsel hinted at the disconnect in February, 2017 with its fee petition:

Declaring “Mission Accomplished”, Co-Lead Class Counsel wants a fee for legal services incurred negotiating a settlement with the NFL and a performance bonus for the “groundbreaking global resolution” they achieved. ECF 7151, p. 5	But, “anticipating substantial future efforts,” including providing assistance in administrative appeals to those <i>without private lawyers</i> , Co-Lead Class Counsel wants the Court to hold back an additional 5% of every dollar awarded to each former NFL player for the future legal services of Class Counsel Also, ECF 7151. pp. 59, 62
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Eleven months later, the “groundbreaking global resolution” is falling short of the forecast and is requiring more “future efforts” than Co-Lead Class Counsel anticipated:

Co-Lead Class Counsel revises the projected value of the settlement based upon increased <i>registrations</i> to cast the percentage bonus sought in a better mathematical light. ⁴ ECF 9552-1, p. 2.	Co-Lead Class Counsel reveals that the 5% set aside is all the more important because Class Counsel are dealing with NFL contests on monetary awards, thus, appeals have resulted in “many disputed issues between the Settling Parties.” Also, ECF 9552, ¶¶ 5-7
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The former NFL Players’ fight for compensation has just begun. The NFL is

⁴ Movants renew their previously-articulated objections (ECF. 7533) to the methodology used by Thomas Vasquez Ph.D. Movants incorporate those objections and the declaration of Dr. Jamshid Loft as the January 3, 2018 “analysis” suffers the identical flaws as the April, 2017 analysis.

predictably waging war, via appeal, claim by claim to ensure that the uncapped “Whole” is less than the \$675 million it originally agreed to pay. Co-Lead Class Counsel’s race to be paid both (a) a bonus for a good settlement and (b) a set aside for re-litigating under a poor settlement has led to Professor Rubenstein’s recommendation to presumptively cap private fee-contracts.

But the analysis is backwards. The battle field is individual claims and appeals and the recommendation leaves the players without their individual lawyers. Privately-contracted lawyers are the only lawyers working for the former NFL Players whose interest in obtaining actual monetary recovery is aligned in lock-step with the former NFL Players represented. Class counsel seeks payment now and later without regard to proven success. Capping a privately-contracted fee drives private lawyers out of the process. Though the Class notices invited the players to hire private counsel despite the absence of a need to do so, Co-Lead Class Counsel has acknowledged that, at most, it anticipated assisting private counsel in the appeals that are now driving the Settlement. Driving private lawyers out of the process deprives the former NFL Player client of individualized representation⁵ submitting a claim and litigating an appeal against the NFL.⁶ And, driving private counsel out of the process dries up former NFL Player access to advanced “litigation costs” to file appeals and obtain second-level diagnoses, that the Settlement requires each player to pay out of pocket. Class counsel does not advance those costs.

The Court should reject the recommendation on presumptively capping private fee-contracts and also reject a set aside of anything above zero.

⁵ In that connection, Movants reurge their request to depose Professor Rubenstein under Rule 706 (ECF 9536, 9554) and now seek leave to serve discovery on Co-Lead Class Counsel for all data, all submissions to the Master, any rulings or recommendations concerning settlement interpretation, redacted to protect player identity, as this data is material to Movants’ claims’ submissions and anticipated appeals. This Settlement should be interpreted and applied consistently from player to player.

⁶ The Court has already declined to provide settlement-interpretation rulings on a Class-wide basis, preferring individualized appeals. *See, e.g.* ECF 8882.

Dated: January 30, 2018

Respectfully Submitted,

/s/ Lance H. Lubel

Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman
Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

/s/ Matthew C. Matheny

Matthew C. Matheny
Texas State Bar No. 24039040
mmatheny@pulf.com
Jacqueline Ryall
jryall@pulf.com
PROVOST UMPHREY
LAW FIRM, L.L.P.
Attorney at Law
Post Office Box 4905
Beaumont, Texas 77704
(409) 835-6000
(409) 838-8888 - Fax Number

/s/ Mickey Washington

Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

/s/ James C. Canady
James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (713) 284-5204
Facsimile: (713) 284-5250
Email: ccanady@canadylawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on January 30, 2018.

/s/ Lance H. Lubel
Lance H. Lubel

Exhibit A

CURRICULUM VITAE

Brian R. Ott, M.D.

Business Address: Neurology Department
Rhode Island Hospital – APC 7
593 Eddy Street
Providence, RI 02903

Business Telephone: (401) 444-5745

FAX: (401) 606-8555

E-Mail: BOtt@lifespan.org
Brian_Ott@brown.edu

EDUCATION:

Undergraduate: Syracuse University, Syracuse, NY, Biology, BS
1971-1975

Medical School: Jefferson Medical College, Philadelphia, PA, Medicine, *MD*
1975-1979

Other degrees: Brown University, Providence, RI, MA, *ad eundem*
2015

POSTGRADUATE TRAINING:

Internship: Internal Medicine, Roger Williams General Hospital,
1979-1980 Brown University School of Medicine, Providence, RI

Residency: Internal Medicine, Roger Williams General Hospital,
1980-1982 Brown University School of Medicine, Providence, RI

Residency: Neurology, Longwood Program: Brigham and Women's, Beth Israel, Children's,
1982-1985 and V.A. Hospitals, Harvard University Medical School, Boston, MA

AWARDS AND HONORS:

1975	Syracuse University, Phi Beta Kappa, Magna Cum Laude
1979	Arthur Krieger Memorial Prize in Neurology, Jefferson Medical College
1987	Greater Boston Physicians for Social Responsibility Code Blue Award, Co-recipient
1990	Fellowship, American College of Physicians
1991	Surdna Foundation Fellowship, Brown University Center for Gerontology and Health Care Research
1998	Membership, American Neurological Association
1998	Fellowship, American Academy of Neurology
1999	Honorary Brian Ott Annual Alzheimer Research Symposium founded by the RI Chapter, Alzheimer's Association; recognized by Lieutenant Governor's Office, State of RI
1999	Excellence in Teaching Award, Brown University Geriatric Psychiatry Program
2002-	Who's Who in Medicine and Healthcare, 4 th edition

2003-	Who's Who in America, 58 th edition
2004-	Best Doctors in America, Neurology
2011-	Adjunct Professor of Pharmacy Practice, University of Rhode Island
2013	Appointment by Governor Lincoln Chafee to the Rhode Island Advisory Commission on Aging
2013	Fellowship, American Neurological Association
2013	Jerome Ely Award for article of the year, <i>Human Factors</i>
2014	Dean's Excellence in Teaching Award, Alpert Medical School of Brown University
2017-	Adjunct Professor of Neuroscience, University of Rhode Island
2018	Milton Hamolsky Lifetime Achievement Award, Rhode Island American College of Physicians

PROFESSIONAL LICENSES & BOARD CERTIFICATIONS:

1980	Diplomate National Board of Medical Examiners
1981-	Rhode Island License Registration, #5819
1985-1989	Massachusetts License Registration, #54356
1982-	American Board of Internal Medicine, #85014
1987-	American Board of Psychiatry and Neurology, #29864
1994-2004	Geriatric Medicine Added Qualifications, American Board of Internal Medicine, #085014
2004-2014	Geriatric Medicine Added Qualifications, American Board of Internal Medicine, Recertification

ACADEMIC APPOINTMENTS:

1982-1985	Clinical Fellow in Neurology, Harvard University Medical School
1989-1996	Assistant Professor, Department of Clinical Neurosciences, Brown University Medical School
1996-2002	Associate Professor, Department of Clinical Neurosciences, Brown University Medical School
2002-2009	Professor, Department of Clinical Neurosciences, Brown University Medical School
2009-	Professor, Department of Neurology, Warren Alpert Medical School, Brown University
2011-	Adjunct Professor of Pharmacy Practice, University of Rhode Island
2017-	Adjunct Professor of Neuroscience, University of Rhode Island

HOSPITAL APPOINTMENTS:

1985-1989	Active Staff, Addison Gilbert Hospital, Gloucester, MA
1985-1989	Courtesy Staff, Hunt Memorial Hospital, Danvers, MA
1985-1989	Active Staff, Beverly Hospital, Beverly, MA
1989-1990	Associate Active Staff, Roger Williams Medical Center, Providence, RI
1990-1992	Consultant Staff, U.E. Zambano Memorial Hospital, Wallum Lake, RI
1990-1996	Active Staff, Roger Williams Medical Center
1997-2005	Courtesy Staff, Roger Williams Medical Center
1996-2005	Active staff, Memorial Hospital of Rhode Island, Pawtucket, RI
1994-2005	Consultant Staff, Rhode Island Hospital, Providence, RI
2005-2009	Consultant Staff, Memorial Hospital of Rhode Island
2000-	Consultant Staff, Miriam Hospital, Providence, RI
2005-	Active Staff, Rhode Island Hospital
2009-	Courtesy Staff, Memorial Hospital of Rhode Island
2010-	Consultant Staff, Women's and Infants Hospital, Providence, RI

JOURNAL REVIEWER

1985	Kidney International
1996-	Journal of Neuropsychiatry and Clinical Neurosciences
1998-	Neurology
	Member, Neurology Reviewer Network
2002	Journal of Gerontology: Medical Sciences
2002-	Alzheimer Disease and Associated Disorders
2002-	Health and Quality of Life Outcomes
2000-	Journal of the International Neuropsychological Society
2003	Women's Health in Primary Care
2004-	Journal of the American Geriatrics Society
2004-	Journal of Geriatric Psychiatry and Neurology
2004-	Journal of the American Medical Association
2005	Neuropsychopharmacology
2005-	International Journal of Geriatric Psychiatry
2006	Neuropsychology
2006-	Canadian Medical Association Journal
2008-	Dementia & Geriatric Cognitive Disorders
2011-	Aging Health
2011-	Journal of Alzheimer's Disease
2011-	Accident Analysis & Prevention
2011-	Alzheimer's & Dementia
2011	Psychopharmacology
2012	Journal of Neurology, Neurosurgery, and Psychiatry
2013-	Neurobiology of Aging
2014	Alzheimer's Research and Therapy
2015-	Neurology: Clinical Practice
2016	International Journal of Injury Control and Safety Promotion
2016	Journal of the American Medical Association: Internal Medicine
2016-	Annals of Neurology
2016	Journal of General Internal Medicine
2017	Gerontology

GRANT REVIEWER

1998	The Wellcome Trust, London, England
2005-	Alzheimer's Society, United Kingdom
2006	Netherlands Organization for Scientific Research
2007	Michael Smith Foundation for Health Research, Canada
2007	Medical Research Council, United Kingdom
2007-	Alzheimer's Association
2007	Pilot grant program, Indiana Alzheimer Disease Center
2008	Neurological, Aging and Musculoskeletal Epidemiology Study Section, NIH/NIA
2009	Cognition and Perception Study Section, NIH/NIA
2009	Research Foundation – FWO, Flanders, Belgium
2009	Canada Excellence Research Chairs Program
2010	Special Emphasis Panel, Aging and Mobility, NIH/NIA
2011	Small Business Panel: Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis Study Section, NIH/NIA
2013	Physicians' Services Incorporated Foundation, Canada

2013	Special Emphasis Panel, Epidemiology and Genetics Study Section, NIH/NEI
2014	Special Emphasis Panel, Population Sciences and Epidemiology Study Section, NIH/NIA
2014	Special Emphasis Panel, Child Psychopathology and Developmental Disabilities Study Section, NIH
2017	Kansas City Area Life Sciences Institute (KCALSI)
2018	Special Emphasis Panel, Revision Requests for ADCCs and ADRCs, NIH/NIA

OTHER APPOINTMENTS:

1987-1989	Director of Medical Education, Beverly Hospital
1991-	Faculty Associate, Brown University Center for Gerontology and Health Care Research
1994-1997	Medical Director, Courtyard Assisted Living For Alzheimer's Resident's Unit and advisory board member, The Village At Waterman Lake, Greenville, RI
1995	Consultant, Health Economics Research
1996-2005	Associate Chief of Neurology, Memorial Hospital of Rhode Island
	2005 Interim Chief of Neurology, Memorial Hospital of Rhode Island
1996-1999	Contributor and reviewer for American Board of Internal Medicine Certification Program (Geriatric Medicine examinations)
1999-	Core faculty member, Brown University Center for Primary Care & Prevention
1999 & 2002	Guest editor, Medicine & Health/Rhode Island
2000-	Steering Committee member, Alzheimer's Disease Cooperative Study
	2005- Internal Ethics subcommittee
2000-	Faculty member, Brown University Brain Science Program
2002-	Journal Editorial Board, Neurological Disease section, for Health and Quality of Life Outcomes
2003-2008	Core faculty and Steering Committee member, Brown University Dementia Research Program (T-32)
2004-	Steering Committee member, Alzheimer's Disease Neuroimaging Initiative
1991-1996	Director of the Alzheimer's Disease and Memory Disorders Center, Roger Williams Medical Center
1996-2005	Director of the Alzheimer's Disease & Memory Disorders Center, Memorial Hospital of Rhode Island
2005-	Director of the Alzheimer's Disease & Memory Disorders Center, Rhode Island Hospital
2005-	Director of the Behavioral Neurology and Memory Disorders Division, Rhode Island Hospital Department of Neurology
2009-2016	Journal Editorial Board, Neurology Research International
2011-2012	Associate Editor, The Journal of Alzheimer's Disease
2011-2015	The Vascular Impairment of Cognition Classification Consensus Study (VICCCS) member
2013-2014	Board of Directors member, The Neurology Foundation of Rhode Island
2013-	Rhode Island Governor's Advisory Commission on Aging member
	2016- Co-chair, The Isolated Seniors Subcommittee
2015	Scientific Review Committee, 8th International Driving Symposium on Human Factors in Driver Assessment, June 22-25, Salt Lake City
2015	Chair, External advisory committee for driving and dementia research. Washington University
2015-	Research partnership with the Alzheimer's Therapeutic Research Institute (ATRI)
2015-	Semi-Annual Rhode Island Regional Research Meeting planning committee member
2016	Reviewer, Older Driver Management Program, National Highway Traffic Safety Administration
2017-	Journal editorial board, Alzheimer's & Dementia: Diagnosis, Assessment and Disease Monitoring
2017-	NFL Concussion Settlement Program: Qualified MAF Physician

2018- Executive Committee for the Rhode Island State Plan for Alzheimer's Disease

HOSPITAL COMMITTEES:

1990-1997	Library, Roger Williams Medical Center
1991-1997	Outpatient Practice, Roger Williams Medical Center
1993-1997	Pharmacy and Therapeutics, Roger Williams Medical Center
1998-2000	Bioethics, Memorial Hospital of Rhode Island
1999-2003	Human Subjects in Research, Memorial Hospital of Rhode Island
	2002-2003 Chairman
2006-2007	Ad Hoc Committee for Credentialing the Aging Physician, Rhode Island Hospital

UNIVERSITY COMMITTEES:

1991-1999	Teaching Scholars, Brown University School of Medicine
1991-	Fellowships, Brown University School of Medicine, Department of Clinical
1993	Search Committee for director of Neuropsychology, Roger Williams Hospital,
1997-	Resident education, Brown University School of Medicine, Department of Clinical Neurosciences
1998	Search Committee for staff neurologist and Brown University full time faculty position
1998	Student clerkship committee leader, Brown University School of Medicine, Department of Clinical Neurosciences
1998-2002	Medical Committee on Academic Standing, Brown University School of Medicine
2001-2003	Search Committee chairperson for staff neurologist and Brown University full time faculty position at Memorial Hospital
2002-	Appointments & Promotions Committee, Brown Medical School Department of Neurology
2006	Search Committee for vacancies in Post-Doctoral Training Program in Dementia Research
2007	Committee for Medical Faculty Affairs Task Force, Brown Medical School
2007-2009	Search Committee chairperson for staff neurologist and Brown Medical School full time faculty position at Rhode Island Hospital
2010-2011	Brown Neurology Clerkship working group leader
2015-2017	Search Committee chairperson for staff neurologist and Brown University full time faculty position at Rhode Island Hospital

MEMBERSHIP IN SOCIETIES:

1983-1985	Boston Society of Psychiatry & Neurology
1987-1989	Massachusetts Medical Society
1986-1991	Physicians for Social Responsibility
1995-2000	American Neuropsychiatric Association
1996-1998	American Medical Directors Association
1982-	American College of Physicians
2008-2016	Executive Council member, Rhode Island Chapter
2012-	Program Planning Committee, Rhode Island Chapter
2014-	National ACP Chapter Leader Network
1983-	American Academy of Neurology
1992	Clinical Practice Committee of the Geriatric Neurology Section
1999	Member, Consortium of Neurology Clerkship Directors
2010	Driving Risk in Dementia Dissemination Panel
1989-	Rhode Island Neurological Association

1990-	Alzheimer's Association, Rhode Island Chapter
1993-1999	Board of Directors, Alzheimer's Association, Rhode Island Chapter
1994	Education committee chairperson
1995-1999	President
1998-	American Neurological Association
2010-	Alzheimer's Association International Society to Advance Alzheimer's Research and Treatment

PUBLICATIONS:

1. **Ott BR**, Libbey P, Ryter RJ, Trebbin WM. The treatment of schistosome induced glomerulonephritis. Arch Intern Med. 143:1477-1479, 1983.
2. **Ott BR**, Zamani A, Kleefield J, Funkenstein H. The clinical spectrum of hemorrhagic infarction. Stroke. 17:630-37, 1986.
3. **Ott BR**. Bulimia in a patient with temporal lobe epilepsy. J Neurol Neurosurgery & Psychiatry. 54:1020-21, 1991. PMCID:1014638
4. Hirano M, **Ott BR**, Raps EC, Minetti C, Lennihan L, Libbey NP, Bonilla E, Hays AP. Acute quadriplegic myopathy: A complication of treatment with steroids, nondepolarizing blocking agents, or both. Neurology. 42:2082-2087, 1992.
5. **Ott BR**, Lannon MC. Exacerbation of parkinsonism by tacrine. Clinical Neuropharmacology. 15:222-25, 1992.
6. **Ott BR**, Fogel BS. Measurement of depression in dementia: Self vs clinician rating. Int J Geriatr Psychiatry. 7:899-904, 1992.
7. Farlow M, Gracon SI, Hershey LA, **The Tacrine Study Group**. A controlled trial of tacrine in Alzheimer's disease. JAMA 268:2523- 2529,1992.
8. **Ott BR**, Saver JL. Unilateral amnesic stroke: Six new cases and a review of the literature. Stroke. 24:1033-1042, 1993.
9. Defusco DJ, O'Dowd P, Hokama Y, **Ott BR**. Coma due to ciguatera poisoning in Rhode Island. Am J Med. 95:240-243, 1993.
10. **Ott BR**, Ellias SA, Lannon MC. Quantitative assessment of movement in Alzheimer's disease. J Geriatr Psychiatry Neurol. 8:71-75, 1995.
11. **Ott BR**. Leuprolide treatment of sexual aggression in a patient with dementia and the Kluver-Bucy syndrome. Clinical Neuropharmacology. 18:443-447, 1995.
12. Rich SS, Friedman JH, **Ott BR**. Risperidone versus clozapine in the treatment of psychosis in six patients with parkinson's disease and other akinetic-rigid syndromes. J Clin Psychiatry. 56:556-559, 1995.
13. **Ott BR**. The clinical importance of gender differences in the presentation and management of Alzheimer's disease. Nursing Home Med. 4:1D-6D,1996.
14. **Ott BR**, Noto RB, Fogel BS. Apathy and loss of insight in Alzheimer's disease: A SPECT imaging study. J Neuropsychiatry Clin Neurosciences. 8:41-46, 1996.
15. **Ott BR**, Tate CA, Gordon NM, Heindel WC. Gender differences in the behavioral manifestations of Alzheimer's disease. J Am Geriatr Soc. 44:583-587, 1996.

16. **Ott BR**, Lafleche G, Whelihan WM, Buongiorno GW, Albert MS, Fogel BS. Impaired awareness of deficits in Alzheimer disease. *Alzheimer Disease Assoc Dis*. 10:68-76, 1996.
17. **Ott BR**, Thompson JA, Whelihan WM. Cognitive effects of flumazenil in patients with Alzheimer's disease. *J Clin Psychopharmacology*. 16:400-402, 1996.
18. **Ott BR**, Faberman RS, Noto RB, Rogg JM, Hough TJ, Tung GA, Spencer PK. A SPECT imaging study of MRI white matter hyperintensity in patients with degenerative dementia. *Dementia Geriatr Cogn Disorders*, 8:348-354,1997.
19. **Ott BR**, Owen NJ. Complementary and alternative medicines for Alzheimer's disease. *J Geriatr Psychiatry Neurol*, 11:163-173, 1999.
20. **Ott BR**. Cognition and behavior in patients with Alzheimer's disease. *J Gender Specific Med*, 2:63-69, 1999.
21. Paul R, Cohen R, **Ott B**, Zawacki T, Moser D, Davis J, Stone W. Cognitive and functional status in two subtypes of vascular dementia. *Neurorehabilitation*, 15(3):199-205, 2000.
22. **Ott BR**, Lapane KL, Gambassi G. Gender differences in the treatment of behavior problems in Alzheimer's disease. *Neurology*, 54:427-432, 2000.
23. Fernandez HH, Lapane KL, **Ott BR**, Friedman JH, for the SAGE Study Group. Gender differences in the frequency and treatment of behavior problems in Parkinson's disease. *Movement Disorders*, 15:490-496, 2000.
24. **Ott BR**, Heindel WC, Whelihan WM, Caron MD, Piatt AL, Noto RB. A SPECT imaging study of driving impairment in patients with Alzheimer's disease. *Dementia Geriatric Cogn Disorders*, 11:153-160, 2000. PMCID:3292192
25. **Ott BR**, Heindel WC, Tan Z, Noto RB. Lateralized cortical perfusion in women with Alzheimer's disease. *J Gender Specific Med*, 3:29-35, 2000.
26. **Ott BR**, Noto RB. Sensitivity of SPECT for the diagnosis of Alzheimer's disease. *Clin Gerontologist*, 22(1):73-82, 2000.
27. Paul R, Cohen R, Moser D, **Ott BR**, Gordon N, Zawacki T, Bell S, Stone W. Performance on the Mattis Dementia Rating Scale among patients with vascular dementia: relationships to neuroimaging findings. *J Geriatr Psychiatry Neurol*, 14(1):33-6, 2001
28. Moser DJ, Cohen RA, Paul R, Paulsen JS, **Ott BR**, Gordon N, Bell S, Stone W. Executive function and magnetic resonance imaging subcortical hyperintensities in vascular dementia. *Neuropsych Neuropsychol Behav Neurol*, 14(2):89-92, 2001
29. Paul R, Cohen R, Moser D, **Ott BR**, Zawacki T, Gordon N. Performance on the Hooper Visual Organizational Test in patients diagnosed with subcortical vascular dementia: Relation to naming performance. *Neuropsych Neuropsychol Behav Neurol*, 14(1):93-97, 2001.
30. Cohen RA, Paul RH, Zawacki TM, Sethi M, **Ott BR**, Moser DJ, Stone W, Noto R, Gordon N. Single photon emission computed tomography, magnetic resonance imaging hyperintensity, and cognitive impairments in patients with vascular dementia. *J Neuroimaging*, 11(3):253-260, 2001.
31. **Ott BR**, Lapane KL. Tacrine therapy is associated with reduced mortality in nursing home residents with dementia. *J Am Geriatric Soc*, 50:35-40, 2002.

32. Cahn-Weiner DA, Grace J, **Ott BR**, Fernandez HH, Friedman JH. Cognitive and behavioral features discriminate between Alzheimer's and Parkinson's patients. *Neuropsych Neuropsychol Behav Neurol*, 15(2):79-87, 2002.
33. Paul RH, Cohen RA, Moser DJ, Zawacki T, **Ott BR**, Gordon N, Stone W. The Global Deterioration Scale: relationships to neuropsychological performance and activities of daily living in patients with vascular dementia. *J Geriatr Psychiatry Neurol*, 15(1):50-54, 2002.
34. Ready RE, **Ott BR**, Grace J, Fernandez I. The Cornell-Brown Scale for quality of life in dementia. *Alzheimer Dis Assoc Disord*, 16(2):109-115, 2002.
35. Cohen RA, Paul R, Moser D, Stone W, **Ott BR**, Zawacki T, Gordon N. The relationship of MRI hyperintensities and brain volume to cognitive function in vascular dementia. *J Int Neuropsychol Soc*, 8(6):743-752, 2002.
36. **Ott BR**, Belazi D, Lapane KL. Cognitive decline among female estrogen users in nursing homes. *J Gerontol A Biol Sci Med*, 57(9):M594-M598, 2002.
37. Zawacki TM, Grace J, Paul RH, Moser DJ, **Ott BR**, Gordon N, Cohen RA. Behavioral problems as predictors of functional abilities of vascular dementia patients. *J Neuropsychiatry Clin Neurosci*, 14(3):296-302, 2002.
38. Ready RE, **Ott BR**, Grace J. Amnesic behavior in dementia: symptoms to assist in early detection and diagnosis. *J Am Geriatric Soc* 51:32-37, 2003.
39. Ready RE, Grace J, **Ott BR**, Cahn-Weiner D. Apathy and executive dysfunction in mild cognitive impairment and Alzheimer's disease. *Am J Geriatr Psychiatry*, 11(2):222-228, 2003.
40. Paul RH, Cohen RA, Moser DJ, **Ott BR**, Sweet L, Browndyke J, Malloy P, Garrett K. Clinical correlates of cognitive decline in vascular dementia. *Cogn Behav Neurol*, 16(1):40-46, 2003.
41. **Ott BR**, Heindel WC, Papandonatos GD. A survey of voter participation by cognitively impaired elderly patients. *Neurology*, 60:1546-1548, 2003.
42. Ready RE, **Ott BR**. Quality of life measures for dementia. *Health Qual Life Outcomes*, Apr 23;1(1):11, 2003. PMID:155631
43. Sweet LH, Paul RH, Cohen RA, Moser D, **Ott BR**, Gordon N, Browndyke J, Shah P, Garrett KD. Neuroimaging correlates of Dementia Rating Scale performance at baseline and 12-month follow-up among patients with vascular dementia. *J Geriatr Psych Neurol* 16(4):240-244, 2003.
44. Cahn-Weiner DA, Malloy PF, Rebok GW, **Ott BR**. Results of a randomized placebo-controlled study of memory training for mildly impaired Alzheimer's disease patients. *Appl Neuropsychol* 10(4):215-223, 2003.
45. **Ott BR**, Heindel WC, Whelihan WM, Caron MD, Piatt AL, DiCarlo MA. Maze test performance and reported driving ability in early dementia. *J Geriatr Psych Neurol*. 16(3):151-155, 2003. PMID:3292212
46. Ready RE, **Ott BR**, Grace J. Patient vs informant perspectives of quality of life in mild cognitive impairment and Alzheimer's disease. *Int J Geriatr Psychiatry* 19(3):256-265, 2004.
47. Ready RE, **Ott BR**, Grace J. Validity of informant reports about AD and MCI patients' memory. *Alz Disease Assoc Disorders* 18(1):11-16, 2004.

48. Festa-Martino E, **Ott BR**, Heindel WC. Interactions between phasic alerting and exogenous attentional orienting: Effects of normal aging and Alzheimer's disease. *Neuropsychology* 18(2):258-268, 2004.
49. Garrett KD, Browndyke JN, Whelihan W, Paul RH, DiCarlo M, Moser DJ, Cohen RA, **Ott BR**. The neuropsychological profile of vascular cognitive impairment - no dementia: Comparisons to patients at risk for cerebrovascular disease and vascular dementia. *Arch Clin Neuropsychology*, 19(6):745-757, 2004.
50. Brown LB, **Ott BR**. Driving and dementia: A review of the literature. *J Geriatr Psychiatry Neurol* 17(4):232-240, 2004. PMID:3292210
51. Stern RA, Davis JD, Rogers BL, Smith KM, Harrington CJ, **Ott BR**, Jackson IM, Prange AJ. Preliminary study of the relationship between thyroid status and cognitive and neuropsychiatric functioning in euthyroid patients with Alzheimer's dementia. *Cognitive and Behavioral Neurology*. 17(4):219-223, 2004.
52. Brown LB, **Ott BR**, Papandonatos GD, Sui Y, Ready RE, Morris JC. Prediction of on-road driving performance by patients with mild Alzheimer's disease. *J Am Geriatr Soc*. 53(1):94-98, 2005. PMID:3292197
53. Gunstad J, Brickman AM, Paul RH, Browndyke J, Moser DJ, **Ott BR**, Gordon N, Cohen RA. Progressive morphometric and cognitive changes in vascular dementia. *Arch Clin Neuropsychology*. 20:229-241, 2005.
54. Brown LB, Stern RA, Cahn-Weiner DA, Rogers B, Meser MA, Lannon MC, Maxwell C, Souza T, White T, **Ott BR**. Driving scenes test of the Neuropsychological Assessment Battery (NAB) and on-road driving performance in aging and very mild dementia. *Arch Neuropsychology*. 20:209-215, 2005. PMID:3292213
55. Gasper MC, **Ott BR**, Lapane KL. Is donepezil therapy associated with reduced mortality in nursing home residents with dementia? *Am J Geriatric Pharmacotherapy* 3(1):1-7, 2005.
56. **Ott BR**, Anthony D, Papandonatos GD, Sui Y, D'Abreu A, Burock J, Curtin A, Wu C-K, Morris JC. Clinician assessment of the driving competence of patients with dementia. *J Am Geriatric Soc* 53(5):829-833, 2005. PMID:3292185
57. Grace J, Amick MM, D'Abreu A, Festa-Martino EK, Heindel WC, **Ott BR**. Neuropsychological deficits associated with driving performance in Parkinson's and Alzheimer's disease. *J Int Neuropsychol Soc* 11(6): 766-775, 2005. PMID:3292203
58. Peskind E, Potkin S, Pomara N, **Ott BR**, McDonald S, Xie Y, Gergel I. Memantine treatment in mild to moderate Alzheimer's disease: A randomized controlled trial. *Am J Geriatr Psychiatry* 14:704-715, 2006.
59. Ready RE, **Ott BR**, Grace J. Insight and cognitive impairment: effects on quality of life reports from mild cognitive impairment and Alzheimer's disease patients. *Am J Alzheimers Dis Other Dement* 21(4):242-248, 2006.
60. Amick MM, D'Abreu A, Moro-de-Casillas ML, Chou KL, **Ott BR**. Excessive daytime sleepiness and on-road driving performance in individuals with Parkinson's disease. *J Neurological Sci* 252(1):13-15, 2006.
61. Ready RE, **Ott BR**, Grace J. Factor structure of patient and informant ratings on the Dementia Quality of Life Instrument. *Aging Neuropsychology Cognition* 14(2):144-154, 2007.
62. **Ott BR**, Blake LM, Sauter M, Graham SM, Bell JM. Open label, multicenter, 28-week extension study of the safety and tolerability of memantine in patients with mild to moderate Alzheimer's disease. *J Neurol* 254(3):351-358, 2007.
63. Bhalla RK, Papandonatos GD, Stern RA, **Ott BR**. Anxiety of Alzheimer's disease patients before and after a standardized on-road driving test. *Alzheimer's & Dementia* 3(1):33-39, 2007. PMID:3598633

64. Pomara N, **Ott BR**, Peskind E, Resnick EM. Treatment of cognitive symptoms with memantine in mild to moderate Alzheimer's disease: Secondary analyses from a placebo-controlled randomized trial. *Alzheimer Dis Assoc Disord* 21(1):60-64, 2007.
65. Ready RE, **Ott BR**. Integrating patient and caregiver reports on the Cornell-Brown Quality of Life scale. *Am J Alzheimer's Dis Other Dement* 22(6):528-34, 2007.
66. Amick MM, Grace J, **Ott BR**. Visual and cognitive predictors of driving safety in Parkinson's disease patients. *Arch Clin Neuropsychol* 22(8):957-67, 2007. PMID:3555123
67. **Ott BR**, Heindel WC, Papandonatos GD, Festa EK, Davis JD, Daiello LA, Morris JC. A longitudinal study of drivers with Alzheimer disease. *Neurology* 70(14):1171-1178, 2008. PMID:3664938
68. **Ott BR**, Festa EK, Amick M, Grace J, Davis J, Heindel WC. Computerized maze navigation and on-road performance by drivers with dementia. *J Geriatr Psychiatry Neurol* 21(1):18-25, 2008. PMID:3292182
69. Smith MM, Tremont G, **Ott BR**. Telephone administered dementia screening. *Am J Alz Disease Other Dementias* 24(1):58-69, 2009.
70. Daiello LA, **Ott BR**, Lapane KL, Reinert SE, Machan JT, Dore DD. Effect of discontinuing cholinesterase inhibitor therapy on behavioral and mood symptoms in nursing home patients with dementia. *Am J Geriatr Pharmacother* 7(2):74-83, 2009.
71. **Ott BR**, Daiello LA. How does dementia affect driving in older patients? *Aging Health*, 6(1):77-85, 2010. PMID: PMC2847266
72. **Ott BR**, Cohen RA, Gongvatana A, Okonkwo OC, Johanson CE, Stopa EG, Donahue JE, Silverberg GD. Brain ventricular volume and cerebrospinal fluid biomarkers of Alzheimer's disease. *J Alzheimers Dis* 20(2):647-657, 2010. PMID:3078034
73. Carr D, **Ott BR**. The older driver with cognitive impairment: "It's a very frustrating life." *JAMA* 303(6):1632-1641, 2010. PMID:2915446
74. Daiello LA, **Ott BR**, Festa EK, Friedman M, Miller LA, Heindel WC. Effects of cholinesterase inhibitors on visual attention in drivers with Alzheimer disease. *J Clin Psychopharmacol*. 30(3):245-51, 2010. PMID:3289132
75. Festa, EK, Heindel WC, **Ott BR**. Dual-task conditions modulate the efficiency of selective attention mechanisms in Alzheimer's disease. *Neuropsychologia* 48:3252-3261, 2010. PMID:2928570
76. Okonkwo OC, Alosco ML, Jerskey BA, Sweet LH, **Ott BR**, Tremont G. Cerebral atrophy, apolipoprotein E ε4, and rate of decline in everyday function among patients with amnesic mild cognitive impairment. *Alzheimers Dement*. Sep;6(5):404-11, 2010. PMID:2950092
77. Silverberg N, Ryan L, Carrillo M, Sperling R, Petersen R, Posner HB, Snyder PJ, Hilsabeck R, Gallagher M, Raber J, Rizzo A, Possin K, King J, Kaye J, **Ott BR**, et al. Assessment of cognition in early dementia. *Alzheimers Dementia*. 7(3):e60-76, 2011. PMID:3613863
78. Carr DB, Barco PP, Wallendorf MJ, Snellgrove CA, **Ott BR**. Predicting road test performance in drivers with dementia. *J Am Geriatr Soc*, 59:2112-2117, 2011. PMID: 3228409

79. Tremont G, Papandonatos GD, Springate B, Huminski B, McQuiggan MD, Grace J, Frakey L, **Ott BR**. Use of the telephone-administered Minnesota Cognitive Acuity Screen to detect mild cognitive impairment. *Am J Alzheimers Dis Other Dement*, 26(7): 555 – 562, 2011. PMID 22127023
80. Alosco, ML, **Ott BR**, Cleveland MJ, Royle K, Snyder S, Spitznagel MB, Gunstad, J. Impaired knowledge of driving laws is associated with recommended driving cessation in cognitively impaired older adults. *Dement Geriatr Cogn Dis Extra*, 1(1):358-365, 2012. PMCID:3243640
81. **Ott BR**, Papandonatos GD, Davis JD, Barco PP. Naturalistic validation of an on-road driving test of older drivers. *Human Factors*, 54(4):663 – 674, 2012. PMCID:3568996
82. Davis J, Papandonatos GD, Miller LA, Hewitt SD, Festa EK, Heindel WC, **Ott BR**. Road test and naturalistic driving performance in healthy and cognitively impaired older adults: Does environment matter? *J Am Geriatr Soc*, 60(11):2056-2062, 2012. PMCID:3498523
83. Springate BA, Tremont G, **Ott BR**. Predicting functional impairments in cognitively impaired older adults using the Minnesota Cognitive Acuity Screen. *J Geriatr Psychiatry Neurol*, 25(4):195-200, 2012. PMID 23172763
84. Lucas-Carrasco R, Gomez-Benito J, Rejas J, **Ott BR**. The Cornell-Brown Scale for Quality of Life in Dementia: Adaptation and validation into Spanish. *Alzheimer Dis Assoc Disord*, 27(1):44-50, 2013. PMID 22193352
85. Festa EK, **Ott BR**, Manning KJ, Davis JD, Heindel WC. Effect of cognitive status on self-regulatory driving behavior in older adults: An assessment of naturalistic driving using in-car video recordings. *J Geriatr Psychiatr Neurol*, 26(1):10-18, 2013. PMID 23385363
86. Heindel WC, Festa EK, **Ott BR**, Landy K, Salmon DP. Prototype learning and dissociable categorization systems in Alzheimer's disease. *Neuropsychologia*, 51:1699-1708, 2013. PMID:23751172
87. Zahodne LB, Gongvatana A, Cohen RA, **Ott BR**, Tremont G. Are apathy and depression independently associated with longitudinal trajectories of cortical atrophy in mild cognitive impairment? *Am J Geriatr Psychiatry*, 21(11):1098-106, 2013. PMCID:3797189
88. **Ott BR**, Davis JD, Papandonatos GD, Hewitt S, Festa EK, Heindel WC, Snellgrove CA, Carr DB. Assessment of Driving-Related Skills prediction of unsafe driving in older adults in the office setting. *J Am Geriatr Soc*, 61(7):1164-9, 2013. PMID:23730836
89. Tremont G, Davis J, Papandonatos GD, Grover C, **Ott BR**, Fortinsky RH, Gozalo P, Bishop BS. A telephone intervention for dementia caregivers: Background, design, and baseline characteristics. *Contemp Clin Trials*, 36(2):338-347, 2013. PMCID:3844092
90. Barco PP, Wallendorf MJ, Snellgrove CA, **Ott BR**, Carr DB. Predicting road test performance in drivers with stroke. *Am J Occup Ther* 68(2):221-0, 2014. PMCID:4012570
91. Manning KJ, Davis JD, Papandonatos GD, Hewitt SD, **Ott BR**. Clock drawing as a screen for impaired driving in aging and dementia: Is it worth the time? *Arch Clin Neuropsychol* 29(1):1-6, 2014. PMCID:3897234
92. Springate BA, Tremont G, Papandonatos G, **Ott BR**. Screening for mild cognitive impairment using the Dementia Rating Scale-2. *J Geriatr Psychiatry Neurol* 27(2):139-144, 2014. PMID:24578462

80. Alosco, ML, **Ott BR**, Cleveland MJ, Royle K, Snyder S, Spitznagel MB, Gunstad, J. Impaired knowledge of driving laws is associated with recommended driving cessation in cognitively impaired older adults. *Dement Geriatr Cogn Dis Extra*, 1(1):358-365, 2012. PMID:3243640

81. **Ott BR**, Papandonatos GD, Davis JD, Barco PP. Naturalistic validation of an on-road driving test of older drivers. *Human Factors*, 54(4):663 – 674, 2012. PMID:3568996

82. Davis J, Papandonatos GD, Miller LA, Hewitt SD, Festa EK, Heindel WC, **Ott BR**. Road test and naturalistic driving performance in healthy and cognitively impaired older adults: Does environment matter? *J Am Geriatr Soc*, 60(11):2056-2062, 2012. PMID:3498523

83. Springate BA, Tremont G, **Ott BR**. Predicting functional impairments in cognitively impaired older adults using the Minnesota Cognitive Acuity Screen. *J Geriatr Psychiatry Neurol*, 25(4):195-200, 2012. PMID 23172763

84. Lucas-Carrasco R, Gomez-Benito J, Rejas J, **Ott BR**. The Cornell-Brown Scale for Quality of Life in Dementia: Adaptation and validation into Spanish. *Alzheimer Dis Assoc Disord*, 27(1):44-50, 2013. PMID 22193352

85. Festa EK, **Ott BR**, Manning KJ, Davis JD, Heindel WC. Effect of cognitive status on self-regulatory driving behavior in older adults: An assessment of naturalistic driving using in-car video recordings. *J Geriatr Psychiatr Neurol*, 26(1):10-18, 2013. PMID 23385363

86. Heindel WC, Festa EK, **Ott BR**, Landy K, Salmon DP. Prototype learning and dissociable categorization systems in Alzheimer's disease. *Neuropsychologia*, 51:1699-1708, 2013. PMID:23751172

87. Zahodne LB, Gongvatana A, Cohen RA, **Ott BR**, Tremont G. Are apathy and depression independently associated with longitudinal trajectories of cortical atrophy in mild cognitive impairment? *Am J Geriatr Psychiatry*, 21(11):1098-106, 2013. PMID:3797189

88. **Ott BR**, Davis JD, Papandonatos GD, Hewitt S, Festa EK, Heindel WC, Snellgrove CA, Carr DB. Assessment of Driving-Related Skills prediction of unsafe driving in older adults in the office setting. *J Am Geriatr Soc*, 61(7):1164-9, 2013. PMID:23730836

89. Tremont G, Davis J, Papandonatos GD, Grover C, **Ott BR**, Fortinsky RH, Gozalo P, Bishop BS. A telephone intervention for dementia caregivers: Background, design, and baseline characteristics. *Contemp Clin Trials*, 36(2):338-347, 2013. [PMCID:3844092](#)

90. Barco PP, Wallendorf MJ, Snellgrove CA, **Ott BR**, Carr DB. Predicting road test performance in drivers with stroke. *Am J Occup Ther* 68(2):221-0, 2014. PMID:4012570

91. Manning KJ, Davis JD, Papandonatos GD, Hewitt SD, **Ott BR**. Clock drawing as a screen for impaired driving in aging and dementia: Is it worth the time? *Arch Clin Neuropsychol* 29(1):1-6, 2014. PMID:3897234

92. Springate BA, Tremont G, Papandonatos G, **Ott BR**. Screening for mild cognitive impairment using the Dementia Rating Scale-2. *J Geriatr Psychiatry Neurol* 27(2):139-144, 2014. PMID:24578462

93. Snyder PJ, Lim YY, Schindler R, **Ott BR**, Salloway S, Daiello L, Getter C, Gordon CM, Maruff P. Micro-dosing of scopolamine as a “cognitive stress test”: Rationale and test of a very low dose in an at-risk cohort of older adults. *Alzheimers Dement*. 10(2):262-7, 2014. PMID 24698030
94. Buelow MT, Tremont G, Frakey LL, Grace J, **Ott BR**. Utility of the cognitive difficulties scale and association with objective test performance. *Am J Alzheimers Dis Other Demen*. 29(8):755-61, 2014. PMID 24928819
95. Daniels AH, Daiello LA, Lareau CR, Robidoux KA, Luo W, **Ott B**, Hayda RA, Born CT. Preoperative cognitive impairment and psychological stress in hospitalized elderly hip fracture patients. *Am J Orthop*. 43(7):E146-52, 2014. PMID:25046191
96. Daiello LA, Gongvatana W, Dunsiger S, Cohen R, **Ott BR**. Association of fish oil use with preservation of brain volume and cognitive function. *Alzheimers Dement*. 11(2):226-35, 2015. PMCID:4829435
97. Tremont G, Davis JD, Papandonatos GD, **Ott BR**, Fortinsky RH, Gozalo P, Yue MS, Bryant K, Grover C, Bishop DS. Psychosocial Telephone Intervention for Dementia Caregivers: A Randomized, Controlled Trial. *Alzheimers Dement*. 11(5):541-8, 2015. PMCID:4306648
98. Alosco ML, Penn MS, Spitznagel MB, Cleveland MJ, **Ott BR**, Gunstad J. Reduced physical fitness patients with heart failure as a possible risk factor for impaired driving performance. *Am J Occup Ther*, 69(2):1-8, 2015. PMCID:4480054
99. Bixby KA, Davis JD, **Ott BR**. Comparing caregiver and clinician prediction of fitness-to-drive in people with Alzheimer’s disease. *Am J Occup Ther*, 69(3):1-7, 2015. PMCID:4453038
100. **Ott BR**, Daiello LA, Dahabreh IJ, Springate BA, Bixby K, Murali M, Trikalinos TA. Do statin drugs impair cognition? A systematic review and meta-analysis of randomized controlled trials. *J Gen Int Med*. 30(3):348-58, 2015. PMCID:4351273
Cited for discussion in *Ann Int Med*, ACP Journal Club, May 19, 2015.
101. Barco PP, Baum CM, **Ott BR**, Ice S, Johnson A, Wallendorf M, Carr DB. Driving errors in persons with dementia. *J Am Geriatr Soc*. 63(7):1373-80, 2015. PMID: 26140521
102. Lim YY, Maruff P, Schindler R, **Ott BR**, Salloway S, Yoo D, Noto RB, Snyder PJ. Disruption of cholinergic neurotransmission exacerbates A β -related cognitive impairment in preclinical Alzheimer's disease. *Neurobiol Aging*. 36(10):2709-15, 2015. PMID:26233262
103. Papandonatos GD, **Ott BR**, Davis JD, Barco P, Carr DB. The clinical utility of the trail making tests as predictors of driving performance in older adults. *J Am Geriatr Soc*. 63(11):2358-64, 2015. PMCID:4661063
104. Tremont G, Papandonatos GD, Kelley P, Bryant K, Galioto R, **Ott BR**. Prediction of cognitive and functional decline with the telephone-administered Minnesota Cognitive Acuity Screen. *J Am Geriatr Soc*. 64(3):608-13, 2016. PMID:27000332
105. Alosco ML, Penn MS, Spitznagel MB, Cleveland MJ, **Ott BR**, Gunstad J. Preliminary investigation on the association between depressive symptoms and driving performance in heart failure. *Geriatrics* 2016, 1(1), 2;[Epub] <http://www.mdpi.com/2308-3417/1/1/2>
106. **Ott BR**, Pelosi M, Tremont G, Snyder PJ. A survey of knowledge and views concerning genetic and amyloid PET status disclosure. *Alzheimers Dement (N Y)*. 2(1):23-29, 2016. PMCID:4804344
Comment in *AlzForum*, September 12, 2016

107. **Ott BR**, Davis JD, Bixby K. Video feedback intervention to enhance the safety of cognitively impaired older drivers. *Am J Occup Ther.* 71(2):1-7, 2017. PMID:5317390
108. Roe CM, Barco PP, Head DM, Ghoshal N, Selsor N, Babulal GM, Fierberg R, Vernon EK, Shulman N, Johnson A, Fague S, Xiong C, Grant EA, Campbell A, **Ott BR**, Holtzman DM, Benzinger TL, Fagan AM, Carr DB, Morris JC. Amyloid imaging, cerebrospinal fluid biomarkers, and driving performance among cognitively normal individuals. *Alzheimer Dis Assoc Disord.* 31(1):69-72, 2017. PMID:5085874
109. Tremont G, Davis JD, **Ott BR**, Galioto R, Crook C, Papandonatos G, Fortinsky RH, Gozalo P, Bishop DS. Randomized trial of the family intervention: Telephone Tracking-Caregiver for Dementia Caregivers: Use of community and healthcare resources. *J Am Geriatr Soc.* 65(5):924-930, 2017. PMID:28008609.
110. Babulal GM, Traub CM, Webb M, Stout SH, Addison A, Carr DB, **Ott BR**, Morris JC, Roe CM. Creating a driving profile for older adults using GPS devices and naturalistic driving methodology. *F1000Res.* 5:2376. eCollection 2016. PMID:5133689
111. **Ott BR**, Jones RN, Noto RB, Yoo DC, Snyder PJ, Bernier JN, Carr DB, Roe CM. Brain amyloid in preclinical Alzheimer's disease is associated with increased driving risk. *Alzheimers Dement (Amst).* 6:136-142, 2016. eCollection 2017. PMID:5318288
112. Skrobot OA, O'Brien J, Black S, and **The VICCCS group**. The Vascular Impairment of Cognition Classification Consensus Study (VICCCS). *Alzheimers Dement.* 13:624-33, 2017. PMID:27960092.
113. Babulal GM, Stout SH, Benzinger TL, **Ott BR**, Carr DB, Webb M, Traub CM, Addison A, Morris JC, Warren DK, Roe CM. A naturalistic study of driving behavior in older adults and preclinical Alzheimer disease. *J Appl Gerontol.* Jan 1:733464817690679, 2017 [Epub ahead of print] PMID:28380718
114. Roe CM, Babulal GM, Head DM, Stout SH, Vernon EK, Ghoshal N, Garland B, Barco PP, Williams MM, Johnson A, Fierberg R, Fague MS, Xiong C, Mormino E, Grant EA, Holtzman DM, Benzinger TLS, Fagan AM, **Ott BR**, Carr DB, Morris JC. Preclinical Alzheimer disease and longitudinal driving decline. *Alzheimers Dement (N Y).* 3(1):74-82, 2017. PMID:5396459
115. Giugliano RP, Mach F, Zavitz K, Kurtz C, Schneider J, Wang H, Keech A, Pedersen TR, Sabatine MS, Sever PS, Honarpour N, Wasserman S, **Ott BR**, on behalf of the EBBINGHAUS Investigators. Design and Rationale of the EBBINGHAUS Trial: A phase 3, double-blind, placebo controlled, multicenter study to assess the effect of evolocumab on cognitive function in patients with clinically evident cardiovascular disease and receiving statin background lipid lowering therapy – A cognitive study of patients enrolled in the FOURIER trial. *Clin Cardiol.* 40(2):59-65, 2017. PMID:28207168
116. Giugliano RP, Mach F, Zavitz K, Kurtz C, Im K, Kanevsky E, Schneider J, Wang H, Keech A, Pedersen TR, Sabatine MS, Sever PS, Robinson JG, Honarpour N, Wasserman, SM, **Ott BR**, on behalf of the EBBINGHAUS Investigators. Cognitive function in a randomized trial of evolocumab. *New Eng J Med.* 377(7):633-643, 2017. PMID:28813214
117. Festa EK, Katz AP, **Ott BR**, Tremont G, Heindel WC. Dissociable effects of aging and mild cognitive impairment on bottom-up audiovisual integration. *J Alzheimers Dis.* 59(1):155-167, 2017. PMID:28598838
118. Margolis SA, Papandonatos GD, Tremont G, **Ott BR**. Telephone-administered Minnesota Cognitive Acuity Screen predicts time to institutionalization and homecare. *Int Psychogeriatr.* Sep 25:1-9, 2017. [Epub ahead of print] PMID:28942736

119. Giugliano RP, Pedersen TR, Park J-G, De Ferrari G, Gaciog Z, Ceska R, Toth K, Gouni-Berthold I, Lopez-Miranda J, Schiele F, Mach F, **Ott BR**, Kanevsky E, Pineda AL, Somaratne R, Keech AC, Sever PS, Sabatine MS, on behalf of the FOURIER Investigators. Clinical efficacy and safety of achieving very low LDL-cholesterol concentrations with the PCSK9 inhibitor evolocumab: A prespecified secondary analysis of the FOURIER trial. *Lancet*, Aug 25, 2017. [Epub ahead of print] PMID:28859947
120. Roe CM, Babulal GM, Mishra S, Gordon BA, Stout SH, **Ott BR**, Carr DB, Ances BM, Morris JC, Benzinger TLS. Tau and amyloid positron emission tomography imaging predict driving performance among older adults with and without preclinical Alzheimer Disease. *J Alzheimers Dis*. 61(2):509-513, 2018. PMID:29171997
121. De la Monte SM, Daiello LA, Hapel AJ, Tong M, **Ott BR**. Concordant and discordant serum and cerebrospinal fluid inflammatory cascades in mild cognitive impairment and Alzheimer's disease. *Neuroinflamm Neurodegen*, accepted September, 2017.
122. Skrobot OA, Black S, Chen C, et al. and The VICCCS group. Progress towards standardized diagnosis of vascular cognitive impairment: guidelines from the vascular impairment of cognition classification consensus study (VICCCS). *Alz Dementia*, accepted September, 2017.
123. Venkatesan U, Festa EK, **Ott BR**, Heindel WC. Differential contributions of selective attention and sensory integration to driving performance in healthy aging and Alzheimer's disease. *J Int Neuropsychol Soc*, Dec 28:1-12, 2017. [Epub ahead of print] PMID:29283079

OTHER PUBLICATIONS:

1. **Ott BR**, Tornabene J, Fogel BS. Deficit awareness in dementia: Relevance to the clinical diagnosis of Alzheimer's disease. In: Nicolini N, Corain B, Zatta PF, eds. *Alzheimer's Disease and Related Disorders*. Advances in the Biosciences. Vol. 87. New York: Pergamon Press, pp. 63-65, 1993.
2. **Ott BR**. An adult with spina bifida and recurrent urinary tract infections. *Neurology Reviews*, 1:29, 1993.
3. **Ott BR**. Diagnosis and treatment of depression in patients with dementia. The Brown University Long-Term Care Quality Letter. 5(18):1,6-7,1993.
4. **Ott BR**. Huntington's disease. *Rhode Island Medical Journal*. 76:543-545, 1993.
5. **Ott BR**. Alzheimer's disease. In: Feldmann E, ed. *Current Diagnosis in Neurology*. Mosby-Year Book, Inc. 1994, pp. 173-177.
6. DeFusco DJ, **Ott BR**, O'Dowd P, Hokama Y. Coma due to ciguatera poisoning in Rhode Island (letter). *Am J Med* 99:106-107,1995.
7. **Ott BR**. Case study: A 57-Year-old man with numbness of the chin. *Neurology Reviews*, 3:14, 1995.
8. **Ott BR**. Non-Alzheimer dementing disorders. In: Sage JI, Mark MH, eds. *Practical Neurology of the Elderly*. New York, Marcel Dekker, Inc. 1996, pp. 49-114.
9. **Ott BR**. Driving and dementia: The medical perspective. *Med Health/RI*. 79:383-387,1996.
10. **Ott BR**, Grace J. Vascular dementia. *Med Health/RI*. 80:150-154,1997.
11. Noto RB, **Ott BR**. Brain SPECT scanning (letter). *J Am Geriatr Soc* 46:657-658,1998.

12. **Ott BR**. Alzheimer's disease and other cortical dementias. In: Gilchrist JM, ed. *Prognosis In Neurology*. Boston, Butterworths. 1998, pp.125-129.
13. Abuelo DN, Walsh A, Seltzer W, Anath U, **Ott BR**, Geffroy G. Premature Alzheimer disease was not due to trauma: molecular biology revises diagnosis 15 years after patient's autopsy (letter). *Arch Neurol* 55:1155, 1998.
14. **Ott BR**. Book review: Headache, by ELH Spierings, in *Med Health/RI* 81:279, 1998.
15. Friedman JH, **Ott BR**. Should risperidone be used in patients with Parkinson's disease? (letter). *J Neuropsychiatry Clin Neurosciences* 10:473-475, 1998.
16. **Ott BR**, Mernoff ST. Driving policy issues and the physician. *Med Health/RI* 82:428-431, 1999.
17. **Ott BR**. Book review: *Concepts of Alzheimer's Disease -- Biological, Clinical, and Cultural Perspectives*, ed, by PJ Whitehouse, K. Maurer, and JF Ballenger. *Clinical Gerontologist* 22:141-142, 2001.
18. **Ott BR**, Cahn-Weiner D. Gender differences in Alzheimer's disease. *Geriatric Times* 2(6):23-24, 2001.
19. White T, Stern RA. *Neuropsychological Assessment Battery*. Reliability and validity studies, **Brian Ott**, contributor. Psychological Assessment Resources, Inc. Lutz, FL. 2001, 2003.
20. **Ott BR**. Medical treatment of Alzheimer's disease: Past, present, and future. *Med Health/RI*, 85(7):210-212, 2002.
21. Ready RE, **Ott BR**, Grace J. Assessment of quality of life in Alzheimer's disease and mild cognitive impairment. In: *Research and Practice in Alzheimer's Disease and Cognitive Decline*. Vol. 7. B Vellas, M Grundman, H Feldman, LJ Fitten, B Winblad, E Giacobini, eds., Serdi, 2003.
22. **Ott BR**. Gender differences in the behavior of Alzheimer Disease patients. In: *Alzheimer's Disease – The Basics. A Physician's Guide to the Practical Management*. RW Richter, BZ Richter, Eds., Humana Press, Inc., Totowa, NJ, 2003, pp353-361.
23. **Ott BR**, Cahn-Weiner D. Gender differences in Alzheimer's disease. *Psychiatric Times* 20(2):46-51, 2003.
24. Fernandez HH, Wu CK, **Ott BR**. Pharmacotherapy of Dementia with Lewy Bodies. *Expert Opin Pharmacother*, 4(11):2027-2037, 2003.
25. Heindel W, Festa-Martino A, **Ott B**. Retrieval from semantic memory: Differential effects of aging and Alzheimer's disease. *MIT CogNet*, 2003.
26. Naor-Raz G, Heindel W, Tarr M, **Ott B**. Object recognition impairments in Alzheimer's disease. *MIT CogNet*, 2003.
27. Paul R, Cohen RC, **Ott BR**, Salloway S, Eds. *Vascular Dementia: Cerebrovascular Mechanisms and Clinical Management*. Humana Press, Inc., Totowa, NJ, 2004.
Chapter contributions:
– D'Abreu A, **Ott BR**. Poststroke Dementia: The Role of Strategic Infarcts, 231-241.
– Ready RE, **Ott BR**. Quality of Life in Vascular Dementia, 323-329.
28. Ready RE, **Ott BR**, Grace J. Amnesic behavior in dementia: symptoms to assist in early detection and diagnosis. In: *Research and Practice in Alzheimer's Disease and Cognitive Decline*. Vol. 7. B Vellas, M Grundman, H Feldman, LJ Fitten, B Winblad, E Giacobini, eds., Serdi, 2004.

2. Johanson C, Daiello LA, Stopa E, de la Monte S, Keane M, **Ott BR**. Disrupted blood-cerebrospinal fluid barrier and CSF composition in mild cognitive impairment vs. Alzheimer's disease. J Alz Dis & Parkinsonism, In preparation, 2018.
3. **Ott BR**, Jones RN, Daiello LA, Grammas P, de la Monte S, Denby C, Johanson CE, Stopa E. Blood brain barrier gradients in mild cognitive impairment and Alzheimer's disease: Relationship to inflammatory cytokines and chemokines. Frontiers Aging Neurosci, submitted September, 2017.
4. Margolis SA, Pillemer S, Reynolds GO, Tremont G, **Ott BR**. Cognitive decline predicts perceived loneliness in non-demented older adults at risk of Alzheimer's disease. Aging Mental Health, submitted November, 2017.
5. Pillemer S, Papandonatos GD, Crook C, **Ott BR**, Tremont G. The Modified Telephone-Administered Minnesota Cognitive Acuity Screen for mild cognitive impairment. J Geriatr Psychiatry, In preparation January, 2018
6. Margolis SA, Festa EK, Korthauer LE, Gonsalves MA, Oberman L, Heindel WH, **Ott BR**. Repetitive transcranial magnetic stimulation in primary progressive aphasia and behavioral variant frontotemporal dementia: A case series, In preparation January, 2018.
7. Davis JD, Wang S, Luo G, Moharrer M, Festa EK, Bernier J, Ott BR. Automated detection of risky driving events in the naturalistic environment in both healthy older adults and mild Alzheimer's disease. Geriatrics, In preparation, 2018.

ABSTRACTS

1. Hirano M, **Ott BR**, Raps EC, Lennihan L, Hair LS, Hays AP. Acute steroid myopathy and nondepolarizing blocking agents. Neurology. 41(Suppl 1):421, 1991. The 43rd Annual Meeting of the American Academy of Neurology, Boston, April 25, 1991.
2. Fogel BS, **Ott BR**. Measurement of depression in dementia. The 145th Annual Meeting of the American Psychiatric Association, Pittsburgh, May 2-7, 1992.
3. **Ott BR**, Tornabene J, Fogel BS. Deficit awareness in dementia: Relevance to the clinical diagnosis of Alzheimer's disease. Neurobiol Aging. 13:(Suppl 1):11, 1992. The Third International Conference on Alzheimer's Disease and Related Disorders, Venice, Italy, July 12-17, 1992.
4. Saver J, **Ott BR**. Unilateral lesions in amnesic stroke. Neurology. 43 (Suppl 1): 244,1993. The 45th Annual Meeting of the American Academy of Neurology, New York, April 28, 1993.
5. **Ott BR**, Lafleche G, Whelihan WM, Buongiorno GW, Fogel BS. Unawareness of dementia in Alzheimer's disease. Neurology 44(Suppl 2):239-240, 1994. The 46th Annual Meeting of the American Academy of Neurology, Washington, May 4, 1994.
6. **Ott BR**. New treatment options for dementia. Advances in the Treatment of Neurologic Disorders, Newport, RI, July 10, 1994.
7. **Ott BR**. Loss of insight in Alzheimer's disease. APA Symposia #92B:154, 1995. New Concepts In the Neuropsychiatry Of Motivation symposium, 148th Annual Meeting of the American Psychiatric Association, Miami, May 25, 1995.
8. **Ott BR**, Noto RB, Fogel BS. Apathy and loss of insight in Alzheimer's disease: A SPECT imaging study. J Neuropsychiatry Clin Neuroscience 7:422, 1995. The American Neuropsychiatric Association Seventh Annual Meeting, Pittsburgh, PA., October 15, 1995.

9. Whelihan WM, **Ott BR**, Thompson JA. The relationship of neuropsychological executive tests to SPECT measures of frontal lobe functioning in patients with dementia. Arch Clin Neuropsychology, 11(5):462-463, 1996. The National Academy of Neuropsychology, 15th Annual Meeting, San Francisco, November 1, 1995.
10. **Ott BR**, Tate CA, Gordon NM, Heindel WC. Gender differences in the behavioral manifestations of Alzheimer's disease. The Lancet Conference: Dementia 1996, Edinburgh, Scotland, April 25, 1996,
11. Faberman RS, **Ott BR**, Noto RB, Rogg JM, Hough TJ, Spencer PK, Tung GA. Correlation of white matter hyperintensities on MRI and cortical abnormalities on HMPAO SPECT imaging in Alzheimer's disease. The American Society of Neuroradiology, Seattle, June 21, 1996.
12. Faberman RS, **Ott BR**, Noto RB, Rogg JM, Hough TJ, Spencer PK, Tung GA. Correlation between white matter hyperintensities on MRI and cortical perfusion on SPECT imaging in dementia. Radiology 201(P):457,1996. The 82nd Scientific Assembly and Annual meeting of the Radiological Society of North America, Chicago, December 1, 1996.
13. **Ott BR**, Noto RB. Functional correlates of driving impairment in patients with dementia. J Neuropsychiatry Clin Neurosci 9:175, 1997. The American Neuropsychiatric Association Eighth Annual Meeting, Orlando, FL, February 4, 1997.
14. **Ott BR**, Heindel WC, Whelihan WM, Noto RB. A SPECT imaging study of driving impairment in patients with dementia. The First Annual Brown University Brain Science Research Day, Providence, RI, April 3, 1997.
15. Sinha R, Heindel W, **Ott BR**. Classification learning and recognition memory for prototype dot patterns in Alzheimer's disease. The Society for Neuroscience Annual Meeting, New Orleans, LA, October 25, 1997.
16. Whelihan WM, Caron M, Piatt A, Noto RB, **Ott BR**, Heindel WC. Neuropsychological predictors of driving ability in early-stage dementia. The National Academy of Neuropsychology 17th Annual Meeting, Las Vegas, November 10-13, 1997.
17. **Ott BR**, Heindel WC, Whelihan WM, Noto RB. A SPECT imaging study of driving impairment in patients with dementia. The Memorial Hospital 65th Annual Kenney Day Program, Pawtucket, RI, February 6, 1998.
18. **Ott BR**, Noto RB, Clements NC. Sensitivity of SPECT for the diagnosis of Alzheimer's disease. Neurobiol Aging Vol. 19, No. 4S, S159, 1998. The Sixth International Conference on Alzheimer's Disease and Related Disorders, Amsterdam, The Netherlands, July 20, 1998.
19. Abdallah H, **Ott BR**. Brainstem stroke following herpes zoster infection. The 1999 Rhode Island Regional Conference of the American College of Physicians, Warwick, RI, April 6, 1999.
20. **Ott BR**, Lapane K, Gambassi G. Gender differences in the behavior problems and treatment of Alzheimer's disease. Neurology 52(Suppl 2):396,1999. The 51st meeting of the American Academy of Neurology, Toronto, Canada, April 22, 1999.
21. Grace J, Boyle P, **Ott BR**, Noto R. Behavioral measurement and SPECT imaging of frontal functioning in dementia. The 28th Annual Meeting of the International Neuropsychological Society, Denver, Colorado, February 9, 2000.
22. **Ott BR**, Heindel WC, Tan Z, Noto RB. Laterality differences in cerebral blood flow between men and women with Alzheimer's disease. The 11th Annual Meeting of the American Neuropsychiatric Association, Fort Meyers, Florida, February 20, 2000.

23. Grace J, Zawacki TM, **Ott BR**, Boyle P, Noto R. Behavioral, neuropsychological, and SPECT correlates of frontal lobe functioning in dementia. *Brain and Cognition*, 2000. The 10th Annual Rotman Research Institute Conference on the Frontal Lobes, Toronto, Canada, March 20, 2000.
24. Heindel W, Festa-Martino E, **Ott B**. Retrieval from semantic memory: differential effects of aging and Alzheimer's disease. The 7th Annual Meeting of the Cognitive Neuroscience Society, San Francisco, April 11, 2000.
25. **Ott BR**, Lapane KL, Owens NJ. Sex hormone drugs and behavioral problems in male nursing home residents. *Neurobiol Aging* 21(1S):238, 2000. The World Alzheimer Congress 2000, Washington, DC, July 12, 2000.
26. Ready RE, **Ott BR**, Grace J, Fernandez I. The Cornell-Brown Scale for quality of life in dementia. The Brown University Department of Psychiatry annual research symposium, February 2001.
27. Naor-Raz G, Heindel W, Tarr M, **Ott B**. Evidence for object recognition impairment in Alzheimer's disease. The 8th Annual Meeting of the Cognitive Neuroscience Society, New York, March 25-27, 2001.
28. Festa-Martino E, Heindel W, **Ott B**. Differential effects of aging and Alzheimer's disease on selective attention and arousal. *Inv Ophthalmol Visual Sci (Suppl)*42:S852, 2001. The annual meeting of the Association for Research in Vision and Ophthalmology, New Orleans, April 29-May 4, 2001.
29. Ready RE, **Ott BR**, Grace J, Fernandez I. The Cornell-Brown Scale for quality of life in dementia. *Neurology*. 56 (Suppl 3): 173-174, 2001. The 53rd Annual Meeting of the American Academy of Neurology, Philadelphia, May 9, 2001.
30. Ready RE, Grace J, **Ott BR**, Cahn-Weiner D. Behavior change in mild cognitive impairment and dementia. *Arch Clin Neuropsychol* 2001. The National Academy of Neuropsychology, San Francisco, November 1, 2001.
31. Zawacki TM, Grace J, Paul R, Moser DJ, **Ott BR**, Gordon N, Cohen RA. Behavioral problems as predictors of functional abilities of vascular dementia patients. The National Academy of Neuropsychology, San Francisco, November 1, 2001.
32. Ready RE, **Ott BR**, Grace J. Amnesic behavior in dementia: symptoms to assist in early detection and diagnosis. 69th Annual Kenney Research Day, Memorial Hospital of Rhode Island, Pawtucket, RI, February 1, 2002.
33. Cahn-Weiner D, Grace J, **Ott B**, Friedman J, Fernandez H. Cognitive and behavioral features of Alzheimer's disease and Parkinson's disease patients. International Neuropsychological Society 30th Annual Meeting, Toronto, February 13-16, 2002.
34. Cahn-Weiner D, Malloy PF, Ready R, Grace J, **Ott B**, Rebok G. Preliminary results of a memory training intervention for Alzheimer's disease patients. *J Int Neuropsychol Soc* 2002;8:176. The International Neuropsychological Society 30th Annual Meeting, Toronto, February 13-16, 2002.
35. **Ott BR**, Heindel WC, Whelihan WM, Caron MD, Piatt AL, DeCarlo MA. *J Am Geriatric Soc* 2002;50(4):S167. Maze test performance and reported driving ability in early dementia, 2002 American Geriatrics Society Annual Meeting, Washington, May 8-12, 2002.
– Selected for the Presidential Poster Session
36. Ready RE, **Ott BR**, Grace J. Apathy and depression predict patient and caregiver ratings of quality of life in mild cognitive impairment and Alzheimer's disease. The 8th International Conference on Alzheimer's Disease and Related Disorders, Stockholm, Sweden, July 20-25, 2002.

37. Belazi D, Lapane K, **Ott BR**. Estrogen and cognitive decline: A prevention study of women in nursing home facilities. Drug Information Association Fourth Annual Workshop on Pharmaceutical Outcomes Research, Newport, October 17-18, 2002.
38. Ready RE, **Ott BR**, Grace J. Quality of life in mild cognitive impairment and Alzheimer's disease: Discrepancies between caregiver and patient reports. Kenney Research Day Symposium, Memorial Hospital of Rhode Island, Pawtucket, RI, February 7, 2003.
39. Stern RA, Davis JD, Rogers BL, Smith KM, Harrington CJ, **Ott BR**, Prange AJ. A double-blind study of thyroxine in the treatment of Alzheimer's dementia. *J Neuropsychiatry Clin Neurosci*, 15(2):268. 14th Annual Meeting of the American Neuropsychiatric Association, Honolulu, February 1-4, 2003.
40. Ready RE, **Ott BR**, Grace J. Quality of life in mild cognitive impairment and Alzheimer's disease: Discrepancies between caregiver and patient reports. *J Int Neuropsychol Soc*, 9:226. The International Neuropsychological Society 31st Annual Meeting, Honolulu, February 5-8, 2003.
41. Taylor J, Rosenblum J, **Ott B**, Heindel W. Semantic processing and word-stem completion priming in Alzheimer's disease. The International Neuropsychological Society 31st Annual Meeting, Honolulu, February 5-8, 2003.
42. Brown LB, Stern RA, Cahn-Weiner DA, Rogers B, Davis MA, Lannon MC, Maxwell C, Souza T, White T, **Ott BR**. The ecological validity of the Neuropsychological Assessment Battery (NAB) driving scenes test. *J Neuropsychiatry Clin Neurosci* 16(2):232-233, 2004. The American Neuropsychiatric Association 15th Annual Meeting, Bal Harbour, FLA, February 23, 2004.
43. **Ott BR**, Brown LB, Souza T, Papandonatos GD, Sui Y, Lannon MC, Maxwell C, Morris JC. Prediction of on-road driving performance by patients with mild dementia. *J Neuropsychiatry Clin Neurosci* 16(2):220, 2004. The American Neuropsychiatric Association 15th Annual Meeting, Bal Harbour, FLA, February 22, 2004.
44. **Ott BR**, Peskind ER, Pomara N, Potkin SG, McDonald S, Xie Y, Gergel I. Memantine monotherapy is effective and safe for the treatment of mild to moderate Alzheimer's disease: A randomized controlled trial. The 7th Annual Meeting of the College of Psychiatric and Neurologic Pharmacists, Chicago, April 23, 2004.
45. **Ott BR**, Peskind ER, Pomara N, Potkin SG, McDonald S, Xie Y, Gergel I. Memantine monotherapy is effective and safe for the treatment of mild to moderate Alzheimer's disease: A randomized controlled trial. *J European Neuropsychopharmacol* 14 (suppl 3): S332, 2004. The 17th European College of Neuropsychopharmacology Congress, Stockholm, Sweden, October 11, 2004.
46. Ready RE, **Ott BR**, Grace J. Factor Structure of Patient and Informant Ratings on the Dementia Quality of Life Instrument. International Neuropsychological Society 33rd Annual Meeting, St. Louis, February 2005.
47. Bhalla R, Stern R, Grace J, **Ott BR**. Alzheimer's disease patients' self-ratings of anxiety before and after an on-road standardized driving test.
 - International Neuropsychological Society 33rd Annual Meeting, St. Louis, February 2005.
 - Brown University Dep. of Psychiatry 10th Annual Research Symposium, Providence, April 13, 2006
48. Amick MM, D'Abreu A, Grace J, **Ott BR**. A comparison of on-road driving performance in individuals with Alzheimer's disease and Parkinson's disease. International Neuropsychological Society 33rd Annual Meeting, St. Louis, February 2005.
49. Grace J, Amick MM, D'Abreu A, Festa-Martino E, Heindel WC, **Ott BR**. Relationship between

neuropsychological tests and on road driving in Parkinson's disease. International Neuropsychological Society 33rd Annual Meeting, St. Louis, February 2005.

50. Ready RE, **Ott BR**, Grace J. Insight in mild cognitive impairment and Alzheimer's disease and assessment of quality of life. The 16th Annual Meeting of the American Neuropsychiatric Association, Miami, Florida, February 2005.

51. **Ott BR.** Clinician and caregiver assessments of the driving competence of patients with dementia. 72nd Annual Kenney Research Day Symposium. Pawtucket, RI, March 4, 2005.

52. Amick M, D'Abreu A, Moro-de-Casillas M, Chou K, **Ott BR**. Excessive daytime sleepiness and on-road driving performance in individuals with Parkinson's disease. The 9th International Congress of Parkinson's Disease and Movement Disorders, New Orleans, March 5-8, 2005.

53. **Ott BR**, Anthony D, Papandonatos GD, Sui Y, D'Abreu A, Burock J, Curtin A, Wu C-K, Morris JC. Clinician assessment of the driving competence of patients with dementia.

- American Association of Geriatric Psychiatry 18th Annual Meeting, San Diego, March 3-6, 2005.
- Neurology 64(Suppl 1):A70, 2005. American Academy of Neurology 57th Annual Meeting, Miami, Florida, April 9-16, 2005.

54. Pomara N, **Ott BR**, Peskind E, for the Memantine MEM-MD-10 Study Group. Efficacy of memantine on cognition in mild to moderate Alzheimer's disease.

- The 12th International Congress of the International Psychogeriatric Association, Stockholm, Sweden, September 20-24, 2005.
- American Academy of Neurology 58th Annual Meeting, San Diego, CA, April 1-6, 2006.
- American Neurological Association 131st Annual Meeting, Chicago, October 8, 2006.

55. **Ott BR**, Festa E, Amick M, Grace J, Davis J, Heindel WC. Computerized maze navigation and on-road performance in drivers with dementia. *Alzheimer's & Dementia* 2(3):S568, 2006. The 10th International Conference on Alzheimer's Disease and Related Disorders, Madrid, July 19, 2006.

56. Wu CK, Grace J, **Ott B**. Language-based dementia: Frontotemporal dementia or Alzheimer's disease. The 5th International Frontotemporal Dementia Conference. San Francisco, September 6, 2006.

57. Davis JD, Tremont G, **Ott BR**, Festa EK, Heindel WC. Longitudinal analysis of neuropsychological functioning and on-road performance in drivers with mild dementia. The 35th Annual Meeting of the International Neuropsychological Society. Portland, February 7-10, 2007.

58. Festa EK, **Ott BR**, Heindel WC. The effect of dual-task engagement on response-selection interference in aging and Alzheimer's disease. Cognitive Neuroscience Society 14th Annual Meeting, New York, May 5-8, 2007.

59. Wu CK, Bhalla RK, Grace J, **Ott BR**. Clinical application of MCI diagnosis in a dementia clinic – A study of concordance. Alzheimer's Disease Association International Conference on Prevention of Dementia. Alz Dementia 3(3):142-143, 2007. Washington, DC, June 9-12, 2007. Alzheimer's & Dementia. 3(3): S142–S143, July 2007.

60. **Ott BR**, Heindel WC, Papandonatos GD, Festa EK, Davis JD, Daiello LA, Morris JC. A longitudinal study of drivers with dementia. The 132nd Annual Meeting of the American Neurological Association, Washington, October 7-10, 2007. *Ann Neurology* 62(suppl 11): S22, 2007.

- Selected for the Dementia Walking Tour

61. Smith MM, Daiello LA, Davis JD, **Ott BR**. Prediction of motor vehicle accidents in older adults enrolled in a study of driving and dementia. The 26th Annual National Academy of Neuropsychology Conference, San Antonio,

October 25-28, 2007.

62. Daiello LA, **Ott BR**, Festa EK, Heindel WC. Cholinesterase inhibitors improve visual attention in drivers with Alzheimer's disease.

15th Annual Hospital Research Celebration. Rhode Island Hospital, Providence, RI. November 13, 2007.

– Awarded First Place in the Lifespan Research Celebration Young Investigators Competition

The 2008 International Conference on Alzheimer's Disease, Chicago, July 26-31, 2008. Alzheimer's & Dementia. 4(4) T498, July 2008.

63. Miller SC, **Ott BR**, Salloway S, Tremont G, Malloy P, Stopa E, Donahue J, Amick M, Grace J, Maguire D. Brown University Dementia Data Repository. Brown University Public Health Program Research Day, Brown University, Providence, RI, April 8, 2008.

64. Daiello LA, **Ott BR**, Lapane KL, Reinert SE, Machan JT, Dore DD. Cholinesterase inhibitor discontinuation is associated with behavioral changes in nursing facility residents with dementia.

– American Association for Geriatric Psychiatry Annual Meeting, Orlando, March 14-17, 2008.

– Alzheimer's & Dementia 4(Suppl 4):T498, 2008. The 2008 International Conference on Alzheimer's Disease, Chicago, July 26-31, 2008.

65. Festa EK, Papandonatos GD, **Ott BR**, Heindel WC. Cognitive factors associated with longitudinal decline in driving skills in patients with Alzheimer's disease. Alzheimer's & Dementia 4(Suppl 4):T652, 2008. The 2008 International Conference on Alzheimer's Disease, Chicago, July 26-31, 2008.

66. Tremont G, Smith MM, McQuiggan M, Papandonatos G, **Ott BR**. A brief telephone cognitive screen for mild cognitive impairment. Alzheimer's & Dementia 4(Suppl 4):T271-272, 2008. The 2008 International Conference on Alzheimer's Disease, Chicago, July 26-31, 2008.

67. Jalbert JJ, Grunier A, **Ott B**, Lapane K. Antipsychotic use in the nursing home: The role of the special care unit. The 24th International Conference for Pharmacoepidemiology & Therapeutic Risk Management. Copenhagen, Denmark, August 17-21, 2008.

68. Heindel WC, Festa EK, Set S, Miller LA, David JD, **Ott BR**. Integrating features across and within cortical streams in visual search: Differential effects of aging and Alzheimer's disease. The 16th Annual Meeting of the Cognitive Neuroscience Society, San Francisco, March 21-24, 2009.

69. Festa EK, Heindel WC, Connors NC, Hirshberg L, **Ott BR**. Neurofeedback training enhances the efficiency of cortical processing in normal aging. The 16th Annual Meeting of the Cognitive Neuroscience Society, San Francisco, March 21-24, 2009.

70. **Ott BR**. Driving assessment of the cognitively impaired older driver. Int. Psychogeriatrics 21(Suppl. 2): S18-19, September, 2009.

– The 21st International Congress of the International Traffic Medicine Association. The Hague, Netherlands, April 28, 2009.

– The 14th International Congress of the International Psychogeriatric Association, Montreal, September 1-5, 2009

71. Okonkwo O, Tremont G, **Ott BR**. Ventricular size, apolipoprotein E-4, and functional decline in mild cognitive impairment. Brown University Psychiatry Research Day, March 26, 2009.

72. **Ott BR**, Cohen RA, Okonkwo OC, Johanson CE, Stopa EG, Donahue JE, Silverberg GD. The relationship between brain ventricular volume and cerebrospinal fluid levels of A-beta and tau in apolipoprotein E4 positive normal controls and patients with Alzheimer's disease

– The 2009 International Conference on Alzheimer's Disease, Vienna, July 11, 2009. Alzheimer's & Dementia 5(4): Supplement (July 2009), P299-300

– The 17th Annual Hospital Research Celebration

73. Daiello LA, **Ott BR**, Festa EK, Miller L, Heindel WC. Cholinesterase inhibitors improve visual attention in drivers with Alzheimer's disease. 25th Anniversary International Conference on Pharmacoepidemiology & Therapeutic Risk Management, Providence, RI. August 16-19, 2009.
74. Stopa E, **Ott BR**, Johanson C, Klinge P, Salloway S, Mernoff S, Stoukides J, DeLaMonte S, Silverberg G, Donahue J, Alvarez V, Geller M. Cognitive improvement after Ventriculo-Peritoneal (VP) shunt placement in Alzheimer's Disease (AD) and non-AD dementia. Hydrocephalus 2009 conference, Baltimore, September 17, 2009.
75. Hill BD, Davis J, **Ott BR**, Alosco M, Noto R, Tremont G. SPECT differences between mild cognitive impairment and Alzheimer's dementia patients. 21st Annual Meeting of the American Neuropsychiatric Association, Tampa, March 17-20, 2010.
76. Festa EK, Heindel WC, **Ott BR**. Dual-task conditions modulate the efficiency of selective attention mechanisms in Alzheimer's disease. *Alzheimer's & Dementia* 6(4): S488, 2010. International Conference on Alzheimer's Disease 2010 (ICAD). Honolulu, July 10-15, 2010.
77. Heindel WC, Festa EK, Davis JD, Miller LA, Knott S, **Ott BR**. Differential contributions of selective attention and sensory integration to the decline in driving skill in aging and early Alzheimer's disease. *Alzheimer's & Dementia* 6(4):S128-129, 2010. International Conference on Alzheimer's Disease 2010 (ICAD). Honolulu, July 10-15, 2010.
78. Carr DB, Barco P, Galvin JC, **Ott BR**. Fitness-to-drive in older adults with dementia. *Alzheimer's & Dementia* 6(4):S116, 2010. International Conference on Alzheimer's Disease 2010. Honolulu, July 10-15, 2010.
Alzheimer's & Dementia. 6(4): S116, July 2010
 -- Featured Research Session.
79. Knott SL, Castro MG, Ott JA, McGinn B, Festa EK, Heindel WC, Davis JD, **Ott BR**. Naturalistic view of the mobility of older drivers with and without cognitive impairment. 16th Annual Department of Medicine Research Forum, Brown University, Providence, RI, June 18, 2010.
80. Mikos A, Tremont G, Plourd T, Westervelt H, **Ott BR**. Do patients with mild cognitive impairment demonstrate reduced semantic integrity on animal fluency? The 39th Annual Meeting of the International Neuropsychological Society, Boston, MA, February 2-5, 2011.
81. Davis J, Papandonatos GD, Miller LA, Knott S, Festa EK, Heindel WC, Barco P, **Ott BR**. Road test and naturalistic driving behavior in older adults with and without memory loss: Environment matters. The 39th Annual Meeting of the International Neuropsychological Society, Boston, MA, February 2, 2011.
82. Tremont G, Papandonatos G, Huminski B, Grace J, Frakey L, **Ott BR**. Use of the Telephone-Administered Minnesota Cognitive Acuity Screen (MCAS) to detect mild cognitive impairment. The 39th Annual Meeting of the International Neuropsychological Society, Boston, MA, February 2-5, 2011.
83. Tremont G, Davis J, O'Connor K, Grover C, Bishop D, **Ott B**, Papandonatos G, Fortinsky R. Relationship between expectancy/credibility and early response to telephone-based dementia caregiver interventions. *Alzheimer's & Dementia* 7(4) Suppl 1:S435, 2011. International Conference on Alzheimer's Disease. Paris, July 17-21, 2011.
84. **Ott BR**, Papandonatos GD, Barco PB, Souza TS, Davis JD, Carr DB. Critical analysis of road test designs for older drivers with cognitive impairment. *Alzheimer's & Dementia* 7(4) Suppl 1:S442, 2011. International Conference on Alzheimer's Disease. Paris, July 17-21, 2011.
85. Festa EK, **Ott BR**, Tremont G, Heindel WC. Neocortical disconnectivity disrupts semantic binding in

Alzheimer's disease. Alzheimer's & Dementia 7(4) Suppl 1:S242, 2011. International Conference on Alzheimer's Disease. Paris, July 17-21, 2011.

86. Daiello LA, Gongvatana W, Dunsiger S, Cohen R, **Ott BR**. Association of pre-baseline fish oil supplement use with rates of brain atrophy and cognitive decline in the Alzheimer's Disease Neuroimaging Initiative (ADNI) Cohort. Alzheimer's & Dementia 7(4) Suppl 1:S606,S590, 2011.

- International Conference on Alzheimer's Disease. Paris, July 17-21, 2011.
- 19th Annual Lifespan Hospital Research Celebration, Providence, October 27, 2011.
- Mind Brain Research Day, Brown University, Providence, March 25, 2014

87. Tremont G, Springate B, Papandonatos G, Huminski B, Grace J, Frakey L, **Ott BR**. The telephone-administered Minnesota Cognitive Acuity Screen (MCAS) is sensitive to conversion from mild cognitive impairment to dementia. Alzheimer's & Dementia 7(4) Suppl 1:S547, 2011 International Conference on Alzheimer's Disease. Paris, July 17-21, 2011.

88. Lucas-Carrasco R, Gomez-Benito J, Rejas J, **Ott BR**. The Cornell-Brown scale for quality of life in dementia: Spanish adaptation and validation. International Society for Pharmacoeconomics and Outcomes Research 14th Annual European Congress, Madrid, November 5-8, 2011.

89. Alosco ML, **Ott BR**, Spitznagel MB, Cleveland MJ, Royale K, Snyder S, Gunstad J. Impaired knowledge of driving laws independently predicts recommended driving cessation among patients with dementia and cognitive decline. International Neuropsychological Society 40th Annual Meeting. Montreal, February 15-18, 2012.

90. Manning KJ, Davis JD, Hewitt S, **Ott BR**. Empirical evaluation of dementia driving risks proposed by the American Academy of Neurology.

- 19th Annual Lifespan Hospital Research Celebration, Providence, October 27, 2011.
- International Neuropsychological Society 40th Annual Meeting. Montreal, February 15-18, 2012.

91. Festa E, **Ott BR**, Tremont G, Heindel W. Impaired binding of perceptual information within semantic memory in early-stage Alzheimer's disease: Behavioral evidence for disrupted functional connectivity. Cognitive Neuroscience Society Annual Meeting, Chicago, March 31-April 3, 2012.

92. **Ott BR**, Davis JD, Hewitt S, Carr DB. Prediction of road test and naturalistic driving ability of older people with and without cognitive impairment in the office setting. The 64th Annual Meeting of the American Academy of Neurology, New Orleans, April 25, 2012.

- Selected for the Scientific Highlights session of the top 5% of abstracts.

93. Daniels AH, Daiello LA, Badger J, Born C, Hayda R, **Ott BR**, Szaro J, Cooper MR. Cognitive Assessment After Hip Fracture in the Elderly (CAFÉ): Study Protocol and Selected Baseline Results of a 12-month Prospective Cohort Study. 20th Annual Hospital Research Celebration, Rhode Island Hospital, Providence, RI, October 11, 2012.

94. Springate BA, Tremont G, **Ott BR**. Conversion from mild cognitive impairment to dementia is associated with repetitive behaviors. International Neuropsychological Society 41st Annual Meeting, Waikoloa, Hawaii February 6-9, 2013.

95. Tremont G, Springate B, Papandonatos G, Kelley P, Grace J, Frakey L, **Ott BR**. Prediction of conversion from mild cognitive impairment to dementia with the telephone-administered Minnesota Cognitive Acuity Screen. International Neuropsychological Society 41st Annual Meeting, Waikoloa, Hawaii, February 6-9, 2013.

96. **Ott BR**. Office assessment of the cognitively impaired driver. Symposium presentation: "Trans-disciplinary Approached to the Assessment of Driving Safety: From Teens to the Oldest Old." International Neuropsychological Society 41st Annual Meeting, Waikoloa, Hawaii. February 6-9, 2013.

97. **Ott BR**, Daiello LA, Springate BA, Bixby K, Murali M, Dahabreh IJ, Trikalinos TA. Do statin drugs impair

110. Lim YY, Site M, Maruff P, Fernandez B, Salloway S, **Ott BR**, Schindler R, Snyder PJ. Evidence of neuroinflammation in the retina in presymptomatic Alzheimer's disease. *Alzheimer's & Dementia* 10(4):P429, 2014. Alzheimer's Association International Conference, July 12-17, 2014, Copenhagen, Denmark.
111. Tremont G, Davis J, Bryant K, **Ott BR**, Papandonatos G, Fortinsky R, Gozalo P, Bishop D. Effect of a telephone-based dementia caregiver intervention on use of community and healthcare resources. *Alzheimer's & Dementia* 10(4):P226-227, 2014. Alzheimer's Association International Conference, July 12-17, 2014, Copenhagen, Denmark.
112. Alosco ML, Penn MS, Spitznagel MB, **Ott BR**, Cleveland MJ, Gunstad J. Preliminary evidence for the adverse impact of depressive symptoms on driving fitness in older adults with heart failure. International Neuropsychological Society 43rd Annual Meeting, Denver, February 4-6, 2015.
113. Thomas J, Luo G, Pelosi M, Davis JD, **Ott, BR**. Using virtual collision judgment assessment to predict driving safety risk in aging and dementia. Rhode Island Alzheimer's Disease Research Conference. Warwick, RI, March 5, 2015.
114. Hoffman J, **Ott BR**. Clinical outcomes of Florbetapir (18F) PET imaging in patients with cognitive impairment. Rhode Island Chapter American College of Physicians Annual Scientific Meeting. Cranston, RI, May 7, 2015.
115. **Ott BR**, Pelosi MA, Tremont G, Snyder PJ. A survey of knowledge, beliefs and attitudes regarding genetic and amyloid PET status disclosure.
 - Rhode Island Alzheimer's Disease Research Conference. Warwick, RI, March 5, 2015.
 - Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015.
116. **Ott BR**, Bixby K, Davis JD. Video feedback intervention to improve the safety of cognitively impaired older drivers. Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015.
117. Stopa EG, Padbury J, Daiello LA, **Ott BR**, Sharma S. Placental tau, α -synuclein, A β and APP levels in pre-eclampsia, and Alzheimer's disease risk factor. Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015. *Alzheimer's & Dementia*. 11(7): P372, July 2015.
118. Daiello LA, Pelosi M, Cizginer S, **Ott BR**. Psychoactive medication use and memory impairment among members of an Alzheimer prevention registry. Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015. *Alzheimer's & Dementia*. 11(7): P734, July 2015.
119. Daiello LA, Wellenius G, **Ott BR**, Buka SL. Role of supplemental docosahexaenoic acid (DHA) for cognition in Alzheimer's disease and mild cognitive impairment: A systematic review and meta-analysis of randomized controlled trials. Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015. *Alzheimer's & Dementia*. 11(7): P611, July 2015.
120. Snyder PJ, Lim YY, Maruff P, Schindler R, **Ott BR**, Salloway S, Noto RB, Yoo DC. Disruption of cholinergic neurotransmission unmasks a β -related cognitive impairment in preclinical Alzheimer's disease. Alzheimer's Association International Conference. Washington, D.C., July 18-23, 2015. *Alzheimer's & Dementia*, 11(7): P129–P130, July 2015.
121. Figueroa CM, Festa EK, **Ott BR**, Heindel WC. Sensitivity of component attentional measures to subtle cognitive changes and real-world driving performance in early Alzheimer's disease: A longitudinal examination. International Neuropsychological Society 44th Annual Meeting, Boston, MA, February 3-6, 2016. Brown University Mind Brain Research Day, Providence, RI, March 30, 2016.
122. Ashraf F., **Ott BR**. "Spät-apoplexie," a case of delayed post traumatic intra cerebral hemorrhage. American College of Physicians, RI Chapter Annual Scientific Meeting, Providence, RI, March 30, 2016.

123. **Ott BR**, Jones RN, Noto RB, Yoo DC, Snyder PJ, Bernier JN, Pelosi MA, Carr DB, Roe CM. Brain amyloid in preclinical Alzheimer's disease is associated with increased driving risk. Alzheimer's Association International Conference. Toronto, Canada, July 24-28, 2016. *Alzheimer's & Dementia*. 12(7): P1069, July 2016.
124. Roe CM, Barco P, Head DM, Babulal GM, Stout S, Ghoshal N, Selsor N, Vernon EK, Fierberg R, Shulman N, Johnson A, Fague S, Xiong C, Grant EA, Campbell A, Holtzman DM, Benzinger T, Fagan AM, **Ott BR**, Carr DB, Morris JC. Preclinical Alzheimer disease predicts longitudinal onset of driving difficulties among cognitively normal persons. Alzheimer's Association International Conference. Toronto, Canada, July 24-28, 2016. *Alzheimer's & Dementia*. 12(7):P1071, July 2016.
125. Daiello LA, Stopa EG, **Ott BR**, de la Monte S, Johanson CE. CNS molecular gradients in mild cognitive impairment and Alzheimer's disease: Implications for blood-brain barrier permeability. Alzheimer's Association International Conference. Toronto, Canada, July 24-28, 2016. *Alzheimer's & Dementia*, 12(7):P1149, 2016.
126. Venkatesan UM, Festa EK, **Ott BR**, Heindel WC. What drives driving: Differences in the relationship of visual search and sensory binding to driving performance between healthy aging and Alzheimer's disease. International Neuropsychological Society 45th Annual Meeting, New Orleans, February 1-4, 2017. *J Int Neuropsych Soc* 23(1):230, 2017.
127. Crook C, Papandonatos GD, **Ott BR**, Tremont G. Refining a telephone screening for mild cognitive impairment. International Neuropsychological Society 45th Annual Meeting, New Orleans, February 1-4, 2017.
128. Giugliano RP, Mach F, Zavitz K, Keech A, Terje RP, Sabatine MS, Sever PS, Kurtz C, Honarpour N, **Ott BR**, and the EBBINGHAUS Investigators. Primary results of EBBINGHAUS, a cognitive study of patients enrolled in the FOURIER trial. American College of Cardiology 66th Annual Meeting, Washington, DC, March 17-19, 2017.
129. Lai LY, Festa EK, Serre T, **Ott BR**, Heindel WC. Rapid visual categorization reveals disrupted ventral stream processing in early Alzheimer's disease. Cognitive Neuroscience Society 24th Annual Meeting. San Francisco, March 25-28, 2017.
Second Annual Research Meeting of the Rhode Island Alzheimer's Association, Warwick, RI, April 21, 2017. Best Poster award.
130. Margolis SA, Papandonatos GD, Tremont G, **Ott BR**. Telephone-based Minnesota Cognitive Acuity Screen predicts time to institutionalization and homecare. American Academy of Clinical Neuropsychology Annual Meeting. Boston, June 8-10, 2017.
131. Margolis SA, Tremont G, Denby C, Heller B, **Ott BR**. Subjective cognitive decline in members of the Rhode Island Alzheimer Prevention Registry. Alzheimer's Association International Conference. London, July 16-20, 2017. *Alzheimers Dement* 13(7):P1336, 2017.
132. Santos CY, Johnson LN, Lim YY, Fernandez BM, **Ott BR**, Salloway S, Maruff P, Snyder PJ. Retinal nerve fiber layer and ganglion cell layer volume changes in preclinical Alzheimer's disease over 27 Months. Alzheimer's Association International Conference. London, July 16-20, 2017.
Alzheimers Dement 13(7):P1280, 2017.
American Neurological Association 142nd Annual Meeting, San Diego, October 15-17, 2017.
133. Snyder PJ, Santos CY, Getter C, Schindler R, **Ott BR**, Salloway S, Yoo DC, Noto RB, Lim YY, Maruff P. Cholinergic deficit as a predictor of disease progression: Amyloid accumulation and episodic memory decline in a 27-month preclinical AD study. Alzheimer's Association International Conference. London, July 16-20, 2017. *Alzheimers Dement* 13(7):P1232-33, 2017.
134. Daiello LA, Jones RN, Stopa E, Grammas P, de la Monte S, Johanson CE, **Ott BR**. Blood-brain barrier gradients in mild cognitive impairment and Alzheimer's disease: Relationship to inflammatory cytokines and

22. Sex hormone drug effects on men with dementia, case presentation. Neurology Grand Rounds, Rhode Island Hospital, Providence, RI, October 4, 2000.
23. Alzheimer's: A treatable disease. Medical Grand Rounds. St. Luke's Hospital, New Bedford, MA, November 7, 2000.
24. A longitudinal study of hazardous drivers with dementia. Faculty research meeting, Center for Primary Care and Prevention, Memorial Hospital of Rhode Island, Pawtucket, RI, January 9, 2001.
25. Clinical appraisal of anti-dementia therapy. Geriatric Psychiatry Conference. Butler Hospital, Providence, RI, January 18, 2001.
26. Frontal lobe dementia with motor neuron disease, case presentation. Neurology Grand Rounds, Rhode Island Hospital, Providence, RI, July 11, 2001.
27. Update on Alzheimer's disease. Rhode Island Society of Osteopathic Physicians and Surgeons annual meeting. Newport, RI, August 24, 2001.
28. Update on Alzheimer's disease. Medical Grand Rounds, Memorial Hospital of Rhode Island, Pawtucket, RI, September 26, 2001.
29. Stroke. Family Medicine Conference, Memorial Hospital of Rhode Island, Pawtucket, RI, September 27, 2001.
30. Memory disorders and their treatment. Fifth Annual Symposium, American Academy of Physician Assistants, Pawtucket, RI, November 3, 2001.
31. Mild cognitive impairment. Neurology Grand Rounds, case presentation, Rhode Island Hospital, Providence, RI, June 12, 2002.
32. Cholinesterase inhibitors in the long-term care of Alzheimer's disease. Second Annual Long Term Care Symposium, Warwick, RI, June 14, 2002.
33. Drivers with dementia. Neurology Grand Rounds, Rhode Island Hospital, Providence, RI, September 4, 2002.
34. Mild cognitive impairment. Geriatric Psychiatry Conference. Butler Hospital, Providence, RI, January 16, 2003.
35. Research Update. Alzheimer's Disease Forum. Brown University, Providence, RI, May 6, 2003.
36. Driving and dementia. Geriatric Psychiatry conference, Butler Hospital, Providence, RI, November 6, 2003.
37. Long term management of Alzheimer's disease. Medical Staff Conference, The Westerly Hospital, Westerly, RI, December 4, 2003.
38. Stroke Update. Family Medicine Conference, Memorial Hospital of Rhode Island, Pawtucket, RI, December 5, 2003.
39. Orthostatic tremor and the aging nervous system. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, March 3, 2004.
40. Gender differences in the treatment of Alzheimer's disease. Alzheimer's Disease 2004, Tulsa OK, March 5, 2004.
41. Driving and dementia research. Boston University Alzheimer's Disease Center Seminar, Boston University School of Medicine, Boston, MA, March 10, 2004.

42. Alzheimer Research Panel. Alzheimer's Association Rhode Island Chapter Eleventh Annual Caregiver's Conference, Warwick, RI, April 28, 2004.
43. Advances in the treatment of Alzheimer's disease. Academy of Family Physicians Annual Conference, Newport, RI, May 22, 2004.
44. The cognitively impaired physician. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, November 10, 2004.
45. Driving and dementia. Monthly Research Forum, Memorial Hospital of Rhode Island, Pawtucket, RI, May 10, 2005.
46. Arachnoid cysts and dementia. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, June 29, 2005.
47. Diagnosis and treatment of early Alzheimer's disease 2005. Medical Grand Rounds, Memorial Hospital of Rhode Island, Pawtucket, RI, September 14, 2005.
48. Progress in research on driving and dementia. Dementia research meeting, Rhode Island Hospital, Providence, RI, April 26, 2006
49. Mild cognitive impairment. The Alzheimer Partnership of Bristol County, Marshfield, MA, May 17, 2006.
50. Drivers with dementia. Monthly Research Meeting, Boston University Alzheimer's Disease Center, Boston, MA, June 14, 2006.
51. Drivers with dementia. Monthly Research Meeting, Washington University Alzheimer's Disease Research Center, St. Louis, MO, August 29, 2006.
52. Drivers with dementia. Dementia and Neuropsychiatry regional conference, University of Vermont, Burlington, VT, September 16, 2006.
53. Hereditary frontotemporal dementia due to progranulin mutation. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, January 10, 2007.
54. Identification of hazardous drivers with dementia. Association for Research in Vision and Ophthalmology (ARVO) annual meeting. Vision, Aging, and the Brain session, Fort Lauderdale, FLA, May 5, 2007.
55. Alzheimer's Disease – Early diagnosis, current treatments and investigational therapies. National Alzheimer's Association Clinical Studies Initiative. Providence, RI, May 22, 2007.
56. The changing treatment paradigm in Alzheimer's disease. Grand Rounds, Manchester VA Hospital, Manchester, NH, May 25, 2007.
57. Diagnosis and behavioral management of Alzheimer's disease and other dementias. Glennan Center for Geriatrics, Eastern Virginia Medical School, Norfolk, VA, June 1, 2007.
58. Diagnosis and treatment of cognitive impairment in the elderly. American College of Physicians, Rhode Island Chapter Scientific Meeting. Newport, RI, October 10, 2007.
59. Driving in the elderly. Neurology of the Elderly Symposium, Warren Alpert Medical School of Brown University. Providence, RI, November 3, 2007.

60. Hashimoto's encephalopathy. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, January 28, 2008.
61. A longitudinal study of drivers with Alzheimer disease. Podcast for *Neurology*, Published: Mon, 31 Mar 2008 15:03:36 GMT
62. Driving evaluations in cognitively impaired older adults. Eighth Annual Friedman Conference. Washington University, St. Louis, May 13, 2008.
63. Early onset dementia. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, October 1, 2008.
64. Driving evaluations in cognitively impaired older adults. Geriatric Psychiatry Conference. Butler Hospital, Providence, RI, October 2, 2008.
65. Driving assessment of the cognitively impaired older driver. 21st International Congress of the International Traffic Medicine Association. The Hague, Netherlands, April 28, 2009.
66. Post lumbar puncture epidural hematoma. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, July 21, 2009.
67. Path to Prevention Symposium. Driving assessment of the cognitively impaired older driver. International Psychogeriatric Association 14th International Congress, Montreal, September 2, 2009.
68. Driving impairment in early Alzheimer's disease. Assessment of Cognition in Early Dementia. NIH Workshop, Bethesda, March 31, 2010.
86. The older driver with cognitive impairment: "It's a very frustrating life." Teleconference sponsored by the Institute for Healthcare Improvement in partnership with JAMA, June 16, 2010.
87. New research diagnostic criteria for Alzheimer's disease, mild cognitive impairment, and pre-clinical Alzheimer's disease. Alzheimer's Disease & Memory Disorders Center research meeting, Rhode Island Hospital, Providence, RI, September 29, 2010.
71. Incipient Alzheimer's disease and motor vehicle crashes. Collaborative Research Workshop, Brown University Department of Engineering and Lifespan Hospital System, Providence, RI, December 9, 2010.
72. Diagnosis and treatment of Alzheimer's disease. Update 2011. Medical Grand Rounds, Rhode Island Hospital, Providence, RI, April 5, 2011.
73. Diagnosis and treatment of Alzheimer's disease. Update 2011. Case Management Society of New England. Warwick, RI, May 5, 2011.
74. Diagnosis and treatment of Alzheimer's disease. Update 2011. Newport Hospital Medical Grand Rounds, Newport Hospital, Newport, RI, June 3, 2011.
75. Validation of screening and road tests for older drivers in the "real world." Washington University, St. Louis, MO, June 6, 2011.
76. A case of rapidly progressive dementia. Neurology Grand Rounds, Morbidity and Mortality Conference, Rhode Island Hospital, Providence, RI, September 14, 2011.
77. Driving under the influence of aging and cognitive impairment. Miriam Hospital Be Safe This Fall Annual Meeting. Providence, RI, October 28, 2011.

78. Symposium: Clinical assessment of the cognitively impaired older driver. National Academy of Neuropsychology 31st Annual Conference, Marco Island, FL, November 18, 2011.
79. Naturalistic assessment of cognitively impaired older drivers. Vision and Visual Optics seminar, Schepens Research Institute, Boston, MA, November 29, 2011.
80. A case of frontal variant Alzheimer's disease. Neuropathology Rounds, Rhode Island Hospital, Providence, RI, January 11, 2012.
81. The borderland of Alzheimer's disease and hydrocephalus. Neurology Grand Rounds, Rhode Island Hospital, Providence, RI, January 18, 2012.
82. Driving under the influence of aging and dementia. New Directions in Research and Care, 2012 Education and Research Conference, Keynote address, Greater New Jersey Chapter of the Alzheimer's Association, Somerset, NJ, May 10 and 11, 2012.
83. Meeting the need to treat Alzheimer's disease. The Norman Prince Neurosciences Institute Inaugural Symposium panel discussion. Alpert Medical School of Brown University, Providence, RI, June 8, 2012.
84. Driving under the influence of aging and dementia. Annual Caregiver and Healthcare Professional Conference, Rhode Island Chapter of the Alzheimer's Association, Warwick, RI, June 27, 2012.
85. Office assessment of the cognitively impaired driver. Symposium presentation: "Trans-disciplinary Approached to the Assessment of Driving Safety: From Teens to the Oldest Old." International Neuropsychological Society 41st Annual Meeting, Waikoloa, Hawaii. February 6-9, 2013.
86. Update on Alzheimer's disease, 2012-2013. Department of Medicine Grand Rounds, Rhode Island Hospital, Providence, RI, April 2, 2013.
87. Pseudobulbar affect. Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, May 29, 2013.
88. New directions in the diagnosis and treatment of mild cognitive impairment and early Alzheimer's disease. Annual Caregiver and Healthcare Professional Conference, Rhode Island Chapter of the Alzheimer's Association. Warwick, RI, June 25, 2013.
89. Road test and naturalistic driving performance in healthy and cognitively impaired older adults: Does environment matter? 6th Biennial World Research Congress of The Eye, The Brain, & The Auto. The Detroit Institute of Ophthalmology, Dearborn, MI, September 18, 2013.
90. Driving under the influence of aging and dementia. Annual Capone Family Aging Lecture. Butler Hospital, Providence, RI, November 16, 2013.
91. Oppenheimer Brownell variant of Creutzfeldt Jacob disease. Neurology Morbidity and Mortality Rounds, Rhode Island Hospital, Providence, RI, March 12, 2014.
92. Frontotemporal dementia: An untreatable illness? Neurology Grand Rounds, case discussion, Rhode Island Hospital, Providence, RI, April 23, 2014.
93. Alzheimer's Disease Awareness, panel discussion. Brown University, Providence, RI, April 25, 2014.
94. Assessing and Modifying Risks for Older Drivers. Video internet presentation for Medscape, sponsored by National Highway Traffic and Safety Administration, New York, NY, May 21, 2014.

Direct/total costs: \$163,053/ \$203,816

3. Surdna Foundation Grant Ott (PI) 1991-1993 (completed)
Brown University Center for Gerontology and Health Care Research
Awareness of deficit in Alzheimer's disease.
This study is to examine the psychological and physiological substrate of deficit awareness in patients with Alzheimer's disease.
Role: PI
Direct and total costs: \$15,000

4. #303 1993-1994 (completed)
Hoechst-Roussel Pharmaceuticals, Inc.
Multicenter, 24-week, double-blind, parallel group safety, tolerance and efficacy comparison of placebo and HP 029 (velnacrine maleate) in outpatients with Alzheimer's disease.
This study is to determine safety and efficacy of velnacrine for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/total costs: \$13,877/ \$17,346

5. #159-103 1994-1996 (completed)
Pfizer, Inc.
A randomized, double-blind, placebo-controlled study of the safety and efficacy of three doses of CP-118,954 administered for 12 weeks to subjects with Alzheimer's disease.
This study is to determine safety and efficacy of CP-118,954 for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/total costs: \$208,328/ \$260,410

6. #D94-029 1995-1998 (completed)
Miles/Bayer Inc.
A double blind, placebo-controlled, multicenter pilot study to evaluate the safety and tolerability of metrifonate in patients with probable Alzheimer's disease (phase II)
This study is to determine safety and efficacy of metrifonate for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/total costs: \$117,318/ \$146,648

7. #D95-018 1995-1998 (completed)
Bayer Corp.
A double blind, placebo controlled trial to evaluate the safety and efficacy of metrifonate (BAY A 9826) in patients with probable Alzheimer's disease.
This study is to determine safety and efficacy of metrifonate for the treatment of Alzheimer's disease. (phase III)
Role: Site PI
Direct/total costs: \$195,868/ \$244,836

8. #E2020-A001-312 1996-1997 (completed)
Eisai America, Inc.
A 54-week, randomized, double-blind, placebo-controlled evaluation of the effects of donepezil hydrochloride (E2020) on functional outcomes in patients with Alzheimer's disease with a staged crossover to open-label donepezil hydrochloride.
This study is to determine safety and efficacy of donepezil for the treatment of Alzheimer's disease. (phase IIIB)
Role: Site PI
Direct/total costs: \$166,963/ \$208,704

9. UO1 #AG10483 Leon Thal (PI) 1996-1998 (completed)
NIH/NIA/ADCS Mulnard (Project director)
A multicenter, double-blind, placebo-controlled study of estrogen replacement therapy in patients with mild to

moderate Alzheimer's disease: A pilot study of the Alzheimer's Disease Cooperative Study (ADCS).
This study is to determine safety and efficacy of estrogen for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/indirect costs: \$38,241/ \$47,801

11. # CV-2619/PNFP-001 1997-1999 (completed)
Takeda America, Inc.
A randomized, double-blind, placebo-controlled, twelve-month safety and efficacy trial of 120, 240, and 360 mg tid of Idebenone (CV-2619) in patients with probable Alzheimer's disease.
This study is to determine safety and efficacy of donepezil for the treatment of Alzheimer's disease. (phase III)
Role: Site PI
Direct/indirect costs: \$167,680/ \$210,400

12. BAY a 9826/D97-019 1997-1998 (completed)
Bayer Corp.
Metrifonate investigational nationwide trial.
This study is to determine safety and efficacy of metrifonate for the treatment of Alzheimer's disease. (phase IIIB)
Role: Site PI
Direct/total costs: \$6,000/ \$7,500

13. U01 #AG10483 Thal (PI) 1998-2000 (completed)
NIH/NIA/ADCS Singer (Project director)
A multicenter, placebo-controlled trial of melatonin for sleep disturbance in Alzheimer's disease.
This study is to determine safety and efficacy of melatonin for the treatment of sleep disturbance in Alzheimer's disease. (phase IV)
Role: Site PI
Direct/total costs: \$40,500/ \$54,000

14. #FA-960-0002 1999-2000 (completed)
Fujisawa Research Institute of America
A randomized, double-blind, placebo-controlled study to determine the safety and efficacy of FK960 in patients with mild to moderate probable Alzheimer's disease.
This study is to determine safety and efficacy of FK960 for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/total costs: \$79,125/ \$105,500

15. #082-99-003 1999-2000 (completed)
NeoTherapeutics, Inc.
A multicenter, randomized, double-blind, placebo-controlled study to evaluate AIT-082 in patients with probable Alzheimer's disease of mild to moderate severity.
This study is to determine safety and efficacy of FK960 for the treatment of Alzheimer's disease. (phase II)
Role: Site PI
Direct/total costs: \$101,250/ \$135,000

16. PRG-1837 Cahn-Weiner (PI) 10/1/99-12/31/01(completed)
Alzheimer's Association
Combined behavioral and pharmacologic intervention to improve memory in Alzheimer's disease.
This study is to determine the efficacy of a memory training program for patients with mild Alzheimer's disease.
Role: Co-investigator
Direct/total costs: \$72,728/ \$80,000

17. U01 #AG10483 Thal (PI) 1999-2001 (completed)
NIH/NIA/ADCS Aisen (Project director)
A multicenter trial of rofecoxib and naproxen in Alzheimer's disease.

This study is to determine safety and efficacy of non-steroidal anti-inflammatory drugs for the treatment of Alzheimer's disease. (Phase IIB)

Role: Site PI

Direct/total costs: \$63,000/ \$84,000

18. #082-2001-001

2001-2002 (completed)

NeoTherapeutics, Inc.

A placebo-controlled dose-titration efficacy and tolerability study of Neotrofin™ in patients with probable Alzheimer's disease.

This study is to determine safety and efficacy of Neotrofin for the treatment of Alzheimer's disease. (Phase IIB)

Role: Site PI

Direct/total costs: \$163,875/ \$218,500

19. IRG-99-1668

Stern (PI)

7/1/99-1/31/03 (completed)

Alzheimer's Association

A double-blind study of donepezil with and without thyroid hormone in the treatment of Alzheimer's dementia. This study is to determine safety and efficacy of low dosage thyroid hormone for the treatment of Alzheimer's disease. (Phase II)

Role: Paid consultant

Direct/total costs: \$163,626/ \$179,898

20. U01 #AG10483

Thal (PI)

1998-2003 (completed)

NIH/NIA/ADCS

Peterson (Project director)

A randomized, double-blind, placebo-controlled trial of vitamin E and Aricept to prevent clinical progression from mild cognitive impairment (MCI) to Alzheimer's Disease (AD).

This study is to determine safety and efficacy of donepezil and vitamin E in preventing conversion to dementia among subjects with mild cognitive impairment. (Phase III)

Role: Site PI

Direct/total costs: \$108,000/ \$144,000

21. NO1 #WH-32119

Shumaker (PI)

6/1/96-3/1/05 (completed)

NIH/NHLBI

Assaf (Site PI)

The effects of hormone therapy on the development and progression of dementia (The Women's Health Initiative Memory Study)

This study is to determine safety and efficacy of estrogen hormone replacement therapy in preventing conversion to dementia among post menopausal women. (Phase III)

Role: Site Phase 3 clinician/co-investigator

Total costs: \$17,060,869

22. RO1 #AG15375

Heindel (PI)

4/1/99-3/31/04 (completed)

NIH/NIA

Arousal, attention, and priming in Alzheimer's disease.

This study is to understand attention related cognitive deficits and their role in memory dysfunction in patients with Alzheimer's disease.

Role: Co-investigator (5%)

Direct/total costs: \$297,607/ \$462,721

23. MEM-MD-10+11

2001-2003 (completed)

Forest Laboratories, Inc.

A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of memantine in patients with mild to moderate dementia of the Alzheimer's type.

This study is to determine safety and efficacy of memantine for the treatment of Alzheimer's disease. (Phase III)

Role: Site PI

Direct/total costs: \$115,200/ \$144,000

24. F32 #AG20008 Ready (PI) 7/1/01-6/30/03 (completed)
 NIH/NIA
 Quality of life in cognitively impaired elderly.
 This research fellowship is to understand and develop assessment instruments for quality of life in dementia.
 Role: Sponsor/mentor
 Direct and total costs: \$63,332
25. Ittleson Foundation Ott (PI) 7/16/01-2004 (completed)
 Memory and attentional functional MRI activation in mild cognitive impairment patients treated with donepezil.
 This pilot study is to examine changes in functional MRI related to treatment with donepezil in patients with mild cognitive impairment.
 Role: PI
 Direct and total costs: \$15,700
26. MEM-MD-12 5/1/02-2003 (completed)
 Forest Laboratories, Inc.
 A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of memantine in patients with mild to moderate dementia of the Alzheimer's type.
 This study is to determine safety and efficacy of memantine combined with a cholinesterase inhibitor for the treatment of Alzheimer's disease. (Phase III)
 Role: Site PI
 Direct/total costs: \$108,000/\$144,000
27. NER-MD-01 2/4/03-2004 (completed)
 Forest Laboratories, Inc.
 A randomized, double-blind, placebo-controlled evaluation of the safety and efficacy of neramexane in patients with moderate to severe dementia of the Alzheimer's type.
 This study is to determine safety and efficacy of neramexane for the treatment of Alzheimer's disease in addition to a cholinesterase inhibitor. (Phase II)
 Role: Site PI
 Direct/total costs: \$115,200/\$144,000
28. R21 #MH62561 Tremont (PI) 12/01/01-11/30/04 (completed)
 A telephone intervention for dementia caregivers.
 This study is to develop a telephone intervention for dementia caregivers.
 Role: Paid consultant
 Direct/total costs: \$375,000/ \$576,000
29. U01 #AG10483 Thal (PI) 1/15/02-2/28/07 (completed)
 NIH/NIA/ADCS Ferris (Project director)
 Assessment measures for AD primary prevention trials.
 This study is to develop telephone and mail-in instruments for use in AD primary prevention trials.
 Role: Site PI
 Direct/total costs: \$87,550/ \$109,438
30. U01 #AG10483 Thal (PI) 2/10/03-6/30/07 (completed)
 NIH/NIA/ADCS Aisen (Project director)
 High dose supplements to reduce homocysteine and slow the rate of cognitive decline in Alzheimer's disease.
 This study is to determine the efficacy of folate, vitamin B6, and vitamin B12 in slowing the progression of Alzheimer's disease. (Phase III)
 Role: Site PI
 Direct/total costs: \$90,000/\$112,500

44. #ELN115727-301 and 302 12/1/07-10/31/12 (completed)
 Elan Pharmaceuticals, Inc.
 A multicenter, randomized, double-blind, placebo-controlled, parallel group, efficacy and safety trial of bapineuzumab in patients with mild to moderate Alzheimer's disease who are apolipoprotein E e4 carriers and non-carriers. (Phase III)
 This study is to determine safety and efficacy of bapineuzumab for the treatment of Alzheimer's disease. (Phase III)
 Role: Site PI
 Direct/total costs: \$255,200/\$319,000
45. #ELN115727, WAY-203740 1/1/11-12/31/2012 (completed)
 Wyeth and Janssen Pharmaceutical Companies
 A phase 2, randomized, double-blind, placebo-controlled, parallel group, multicenter biomarker safety, and pharmacokinetic study of bapineuzumab (AAB-001) administered subcutaneously at monthly intervals in subjects with mild to moderate Alzheimer disease. (Phase II)
 This study is to determine safety and efficacy of subcutaneously administered bapineuzumab for the treatment of Alzheimer's disease. (Phase II)
 Role: Site PI
 Direct/total costs: \$270,661; \$338,326
46. 2R01 #AG016335 Ott (PI) 5/15/07-4/30/13 (completed)
 NIH/NIA
 Naturalistic assessment of driving in cognitively impaired elders.
 This study is to define the basis of driving impairment in Alzheimer's disease and develop computerized test predictors of impaired road test performance and driving ability in the natural home environment.
 Role: PI (25%)
 Direct/total costs: \$1,119,416/\$1,506,839
47. 1R01 #NR010559-01 Tremont (PI) 9/28/07-5/31/13 (completed)
 NIH/NINR
 Psychosocial telephone intervention for dementia caregivers
 This study is to determine the efficacy of a telephone-based, psychosocial intervention to improve caregiver burden and depression in dementia caregivers.
 Role: Co-Investigator (5%)
 Direct/total costs: \$1,269,929/\$1,843,500
48. #160701 Aisen (PI) 1/14/09-12/31/13 (completed)
 ADCS/Baxter Relkin (Project Director)
 A randomized, double-blind, placebo-controlled, two dose-arm, parallel study of the safety and effectiveness of immune globulin intravenous (human), 10% (IGIV, 10%) for the treatment of mild-to-moderate Alzheimer's disease
 This study is to determine safety and efficacy of IGIV for the treatment of Alzheimer's disease. (Phase III)
 Role: Site PI
 Direct/total costs: \$243,544/\$304,430
49. Rhode Island Hospital Ott (PI) 9/01/11-10/31/13 (completed)
 Video intervention for the safety of cognitively impaired older drivers.
 This pilot study is to examine the effects of a video event recorder intervention to enhance safe driving in people with questionable to mild dementia.
 Role: Principal Investigator
 Direct/total costs: \$21,000
50. Rhode Island Hospital Cooper (PI) 2011-2014 (completed)
 CAFÉ: Cognitive Assessment after Fracture in the Elderly.
 This study is to examine the effect of cognitive functioning and mental health on recovery from hip fracture.
 Role: Consultant

Direct/total costs: \$159,800/\$196,160

58. #221AD103

Biogen Idec MA, Inc.

1/6/13-2015 (completed)

A randomized, double-blind, placebo-controlled multiple dose study to assess the safety, tolerability, pharmacokinetics, and pharmacodynamics of BIIB037 in subjects with prodromal or mild Alzheimer's disease. (Phase 1B)

This study is to examine safety, tolerability, pharmacokinetics, and pharmacodynamics of a biological agent against beta amyloid in patients with early Alzheimer's disease.

Role: Site PI

Direct/total costs: \$162,537/\$200,564

59. Canadian Institute of Health Research

6/2015 – 4/2016 (completed)

A collaborative international knowledge synthesis to update guidelines for determining medical fitness to operate motor vehicles.

This study is to create a knowledge synthesis and clinical guidelines on driving risks: traumatic brain injury and dementia.

Role: Project expert

Total costs: \$100,000

60. AC-1204

Accera, Inc.

12/-01/13-2016 (completed)

26-Week Long Term Efficacy Response Trial With Optional Open-label Ext (NOURISH AD study). (Phase 4).

This study will evaluate the effects of daily dosing of AC-1204 on cognition, activities of daily living, resource utilization, quality of life, pharmacokinetic measures and safety among participants with mild to moderate Alzheimer's Disease.

Role: Data safety monitoring board member

61. #1R03AG046472-01

Ott (PI)

9/15/2014-8/31/2016 (completed)

NIH/NIA

Secondary analyses and archive of naturalistic driving data in aging and dementia.

This study is to analyze naturalistic driving data obtained from older drivers with and without dementia using advanced GPS and computerized video programs that will result in a rich dataset that can then be compared to data obtained from standardized on-road tests in the same individuals.

Role: Principal investigator (8%)

Direct/total costs: \$146,310/\$191,892

62. #MK-8931-017

Merck Sharp & Dohme Corp.

06/13/13-02/14/17 (completed)

A Phase III, randomized, placebo-controlled, parallel-group, double-blind efficacy and safety trial of MK-8931 in subjects with mild to moderate Alzheimer's disease. (Phase 2/3)

This study is to examine the safety, efficacy and tolerability of MK-8931 in the treatment of mild to moderate Alzheimer's disease.

Role: Site PI

Direct/total costs: \$444,420/\$555,520

63. Nation's Carelink/Univita/LTCG

Ott (PI)

10/01/06-9/30/17 (completed)

Telephone screening for mild cognitive impairment.

This study is to determine the sensitivity and specificity of the Minnesota Cognitive Acuity Screen (MCAS) for mild cognitive impairment.

Role: PI

Direct/total costs: \$160,000/\$200,000

64. #18F-AV-1451-A05

Avid Radiopharmaceuticals, Inc.

1/25/14-2017 (completed)

An open label, multicenter study, evaluating the safety and imaging characteristics of 18F-AV-1451 in cognitively healthy volunteers, subjects with mild cognitive impairment, and subjects with Alzheimer's disease. (Phase 2)

This study is to compare 18F-AV-1451 imaging results in subjects with Alzheimer's disease to subjects with mild cognitive impairment and cognitively healthy older individuals and to establish a database of cognitively healthy individuals to show the spectrum of 18F-AV-1451 imaging results in cognitively healthy individuals across a range of age strata.

Role: Site PI

Total costs: \$293,056

65. #20130385

4/2/2015- 2017 (completed)

Amgen, Inc.

A double-blind, placebo controlled, multicenter study to assess the effect of evolocumab on cognitive function in patients with clinically evident cardiovascular disease and receiving statin background lipid lowering therapy: A study for subjects enrolled in the FOURIER trial. Evaluating PCSK9 Binding antiBody Influence on coGnitive HeAlth in High cardiovascUlar Risk Subjects (EBBINGHAUS study).

This study evaluates change over time in neurocognitive testing in subjects receiving statin therapy in combination with evolocumab (AMG 145), compared with subjects receiving statin therapy in combination with placebo.

Role: Steering committee member

66. Rhode Island Hospital

Ott (PI)

2/1/16 – 6/30/17 (completed)

Neurology Department

Pilot study of repetitive transcranial magnetic stimulation (rTMS) in the treatment of frontotemporal dementia.

This study is to determine if there is evidence of acute symptomatic cognitive benefits for rTMS when administered to patients with behavioral and progressive aphasia variants of frontotemporal dementia.

Role: Principal investigator

Total costs: \$38,540

67. NIH/NIA 2U01 AG024904-06

Weiner (PI)

09/30/04 – 09/15/16 (completed)

NIH/NIA/ADCS

Petersen and Aisen (Protocol directors)

The Alzheimer's disease neuroimaging initiative 1, and 2.

This study is to develop improved methods which will lead to uniform standards for acquiring longitudinal, multi-site MRI and PET data on persons with Alzheimer's disease, mild cognitive impairment, and normal elderly.

Role: Site PI

Total costs: \$233,500

68. Alzheimer's Association

Rabinovici (Study Chair)

4/6/2015 – 12/7/17 (ongoing)

CMS/ACR/ACRIN

The Imaging Dementia – Evidence for Amyloid Scanning (IDEAS) Study

This study of patients receiving amyloid PET scan diagnostic test results for possible Alzheimer's disease seeks to understand the influence of having a positive test result on decisions to seek additional diagnostic testing or treatment and the potential cost benefits.

Role: Site PI

69. Rhode Island Foundation

Ott (PI)

12/26/16 – 12/25/17 (ongoing)

Building the Rhode Island Alzheimer's Disease Prevention Registry

This grant is to support personnel, advertising and printing costs for expansion of the Rhode Island Alzheimer's Disease Prevention Registry, including outreach to minorities and primary care physicians.

Role: PI

Total costs: \$55,000

70. 5U01 #AG10483-21

Aisen (PI)

07/01/11 – 2017 (ongoing)

NIH/NIA/ADCS/Univita/LTCG

Ott (Sub-Project director)

ADCS Infrastructure Support: Rhode Island Alzheimer Prevention Registry.

This sub-project is to identify potential volunteers who would be willing to participate in upcoming early intervention and prevention trials under the sponsorship of the ADCS

Role: Site PI

Direct/total costs: \$39,210/\$49,013 year 1 (NIA/ADCS)

Total costs: \$38,400 per year (Univita; LTCG)

71. #ADC-046-INI

NIH/NIA/ADCS

Craft (PI)

11/01/13 – 2017 (ongoing)

Therapeutic effects of intranasally administered insulin in adults with amnesic mild cognitive impairment or mild Alzheimer's disease. (SNIFF study). (Phase 2/3)

This study is to examine the effects of intranasally administered insulin on cognition, entorhinal cortex and hippocampal atrophy, and cerebrospinal fluid biomarkers in amnesic mild cognitive impairment or mild Alzheimer's disease.

Role: Site PI

Direct/total costs: \$114,456/\$143,076

72. #ADC-040-A4

Aisen (PI)

NIH/NIA/ADCS

Sperling (Project Director)

12/01/13 – 2020 (ongoing)

Anti-amyloid treatment in asymptomatic Alzheimer's disease (A4 Study). (Phase 3)

This study is to determine if solanezumab, administered as an intravenous infusion at a dose of 400 mg every 4 weeks for 3 years, will slow cognitive decline as compared with placebo in subjects with preclinical Alzheimer's disease.

Role: Site PI

Direct/total costs: \$781,020/\$976,275

73. #MK-8931-019

Merck Sharp & Dohme Corp.

06/13/14 – 01/22/2018 (ongoing)

A randomized, placebo-controlled, parallel-group, double blind clinical trial to study the efficacy and safety of MK-8931 in subjects with amnesic mild cognitive impairment due to Alzheimer's disease. (Phase 3)

This study is to examine the safety, efficacy and tolerability of MK-8931 in the treatment of mild cognitive impairment due to Alzheimer's disease.

Role: Site PI

Total costs:\$1,142,866

74. # AG0045058

Obisesan (PI)

07/10/17 – 2020 (ongoing)

Genes, Exercise, Neurocognitive and Neurodegeneration: Community-Based Approach.

Role: Data safety monitoring board member

75. #221AD302

07/01/15 – 2020 (ongoing)

Biogen MA Inc.

A phase 3 multicenter, randomized, double-blind, placebo-controlled, parallel-group study to evaluate the efficacy and safety of aducanumab (BIIB037) in subjects with early Alzheimer's disease. (EMERGE study)

This study is to evaluate the efficacy of monthly doses of aducanumab in slowing cognitive and functional impairment in subjects with early Alzheimer's disease.

Role: Site PI

Direct/total costs: \$310,559/\$388,199

76. #NPSASA-15-363629

Alzheimer's Association

Tremont (PI)

9/1/15 – 8/31/18 (ongoing)

Pilot trial of a mind-body intervention for mild cognitive impairment.

This study is to determine the preliminary efficacy of a yoga intervention for improving cognition, quality of life/emotional function, and daily living skills in individuals with mild cognitive impairment compared to the control, healthy living education.

Role: Co-investigator (3%)

Total costs: \$250,000

77. #NPSASA-15-362133

Alzheimer's Association Ott (PI) 9/1/15 – 8/31/18 (ongoing)

Video feedback intervention for cognitively impaired older drivers.

This study is to determine the efficacy of a video feedback intervention for reducing unsafe driving event frequency in older individuals with mild cognitive impairment and early Alzheimer's disease compared to passive monitoring.

Role: Principal investigator (6%)

Direct/total costs: \$226,659/\$249,324

78. #LEARN-15-338730

USC/Alzheimer's Association Aisen (PI) 1/01/16 – 2020 (ongoing)

Anti-amyloid treatment in asymptomatic Alzheimer's disease (A4 Study). (Phase 3)

This study is to determine the natural history of cognitive change in older people who lack amyloid on PET imaging.

Role: Site PI

Direct/total costs: \$202,727

79. 1R56AG053934-01

NIA Mor (PI) 9/1/17 – 8/31/18 (ongoing)

Caregivers' reactions and experience: Imaging dementia evidence for amyloid scanning (CARE-IDEAS)

This study will fill important gaps in our understanding of how informal caregivers and patients react to the results of Amyloid PET scans as part of the IDEAS study.

Role: Consultant

80. #I8D-MC-AZET

Eli Lilly & Co. 11/14/16 – 2018 (ongoing)

Randomized, double-blind, placebo-controlled and delayed-start study of LY3314814 in mild Alzheimer's disease dementia (The DAYBREAK Study). (Phase 2/3)

This study is to test the hypothesis that LY3314814, administered orally at doses of 20 and 50 mg daily for 78 weeks, will slow the decline of AD as compared with placebo in patients with mild AD dementia.

Role: Site PI

Direct/total costs: \$480,738

81. #54861911ALZ2003

USC Alzheimer Therapeutic Research Institute/Janssen Research and Development, LLC Sperling (PI) 12/30/16 – 2020 (ongoing)

A randomized, double-blind, placebo-controlled, parallel group, multicenter study investigating the efficacy and safety of JNJ-54861911 in subjects who are asymptomatic at risk for developing Alzheimer's dementia. (Phase 2b/3) (The EARLY Study)

This study is to investigate the efficacy and safety of JNJ-54861911 in subjects who are asymptomatic at risk for developing Alzheimer's dementia.

Role: Site PI

Direct/total costs: \$467,1600

82. #M15-566

AbbVie 01/02/17 – 2020 (ongoing)

A phase 2 multiple dose, multicenter, randomized, double-blind, placebo-controlled study to evaluate the efficacy and safety of ABBV-8E12 in subjects with early Alzheimer's disease (The AWARE Study). (Phase 2)

This study is to assess the efficacy of ABBV-8E12 in slowing disease progression (cognitive and functional impairment) in subjects with early AD as measured by the CDR-SB and to assess long term efficacy for up to 96 weeks.

Role: Site PI

Total costs: \$1,981,296

83. NIH/NIA U19AG024904

Weiner (PI) 09/15/16 - 7/31/17 (ongoing)

NIH/NIA/ADCS

Petersen and Aisen (Protocol directors)

The Alzheimer's disease neuroimaging initiative 3.

This study is to develop improved methods which will lead to uniform standards for acquiring longitudinal, multi-site MRI and PET data on persons with Alzheimer's disease, mild cognitive impairment, and normal elderly.

Role: Site PI

Total costs: \$187,484

84. #15T-MC-AACG

11/2/17 – 2020 (ongoing)

Eli Lilly and Company

Assessment of Safety, Tolerability and Efficacy of LY3002813 Alone and in Combination with LY3202626 in Early Symptomatic Alzheimer's disease (The TRAILBLAZER Study). (Phase 3)

This study is to assess the safety, tolerability and efficacy of LY3002813 alone and in combination with LY3202626 in early symptomatic Alzheimer's disease.

Role: Site PI

Total costs: \$881,500

UNIVERSITY TEACHING ROLES:

- | | |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1984-1985 | Introductory lectures to Harvard medical students on neurology rotation, Brigham & Women's Hospital |
| 1989-1996 | <p>BioMed 301 <i>Clerkship in Internal Medicine</i></p> <p>Introductory lectures and group case discussions in neurology for third year Brown medical students rotating on medical clerkship, Roger Williams Medical Center
One session every three months, 1989-1995
Outpatient general neurology clerkship. One student every other month for one afternoon each week, 1995-1996</p> |
| 1989-2005 | <p>BioMed 304F <i>Clerkship in Consultative Neurology</i></p> <p>Clinical teaching rotation for medical students, Roger Williams Medical Center and Memorial Hospital</p> |
| 1990-2006 | <p>BioMed 262 <i>Neurosciences Pathophysiology</i> lectures</p> <p>Revised and improved syllabus and presented lectures.
Toxic and Metabolic Disorders of the CNS</p> <p>Instituted new syllabus and presented lectures.
Infections of the CNS</p> <p>Revised and improved syllabus and presented lectures.
Aging and Dementia</p> |
| 1990-2006 | <p>BioMed 262 <i>Neurosciences Pathophysiology</i> Small Group Laboratory Session leader</p> <p>Four to five sessions each year, 10-12 students</p> |
| 1993 | With assistance of Dr. Sydney Louis, designed and produced a self study and assessment computer program in <i>Behavioral Neurology</i> for medical students and housestaff. |
| 1993-2005 | BioMed 315F <i>Clerkship in Adult Ambulatory Medicine (Neurology)</i> |

- For Brown medical students, Roger Williams Medical Center and Memorial Hospital.
One half-day weekly over six months with one student in general neurology outpatient practice setting
1998-2005 Clerkship leader
- 1993- Clinical supervisor for graduate student research projects in dementia, Brown University Department of Psychology, at Roger Williams, Memorial and Rhode Island Hospitals
- 1994 Independent *Clerkship in Advanced Physical Diagnosis* for third year Brown medical student
- 1994- Instituted new syllabi and presented lectures for University of Rhode Island course PHP 561/562, *Advanced Human Pathophysiology I and II* and PHP/BPS 312, *Foundations of Human Disease I and II*
- Pathophysiology of Pain
- Aging and Dementia
- Stroke: Ischemic and Hemorrhagic
- 1995 Brown University Summer FOCUS Program course, *So You Think You Want to be a Doctor: An Introduction to Medicine*, lecture to high school students
- The Neurological Examination
- 1997-2005 BioMed 373-374 *Introduction to Clinical Medicine* lecture to second year Brown medical students
The Neurological Examination
- 1998-2000 University of Rhode Island Pharmacy Program course, *Advanced Human Pathophysiology for Practitioners* lectures
- Pathophysiology of Pain
- Alzheimer's Disease
- Cerebrovascular Disease
- 1998- Website administrator, Department of Neurology, Brown University
- 2005 BioMed 372 *Epidemiology for the Practice of Medicine* small group laboratory leader
- 2007 Brown University PHP 2210 *Epidemiology of Chronic Disease*
- Alzheimer's Disease lecture and discussion session
- 2008- BIOL 903 *So You Want To Be a Doctor*
- Case and career discussions; office shadowing experience: High school seniors
- 2010- BIOL 3790 *Aging and Dementia*
Course leader: elective for fourth year medical students
- 2011- BIOL 3795 *Elective Clerkship in Neurology*

Clerkship development working group leader and later faculty member

2012- Roger Williams University Law School: *Planning for the Elderly Client* and *Introduction to Elder Law* courses

Lecture and discussion session

HOSPITAL TEACHING ROLES:

1989-2005 Two month required clinical rotation in consultative neurology for first year psychiatry residents from Butler Hospital, at Roger Williams Hospital & Memorial Hospitals.

1989-2005 Noon lectures, consultation rounds, and neurology elective for medical housestaff, one out of every two to three months, Roger Williams and Memorial Hospitals.

1990- Alzheimer's disease and memory disorders specialty outpatient teaching clinic for third year neurology residents, one morning per week year round, Roger Williams, Memorial, and Rhode Island Hospitals

1990-2005 Supervisor/mentor, two month required clinical rotation in consultative neurology for third year neurology residents, Roger Williams & Memorial Hospitals.

1990- Mentor, Neurology Residency Training Program, Rhode Island Hospital
 1990-1993 Ann Hake, MD
 2010-2013 Sergio Lanata, MD
 2016-2019 Timothy Steinhoff, MD

1992-1995 Workshop and journal club lectures in dementia diagnosis and treatment to psychiatry residents at Butler Hospital.

1993-1999 Internal Medicine Board Examination Review in Neurology for third year medical residents, Roger Williams & Memorial Hospitals. Three hour neurology review session, annual.

1994-1996 Director of Neurology Education for the Roger Williams Hospital Internal Medicine Residency. Compiled curriculum for neurology education, 1994.

1996-2005 Lectures and weekly case discussions for internal medicine residents, family practice residents, and Brown medical students, Memorial Hospital

1997- Organizer for monthly Aging and Dementia Research seminar series
 2012- Sponsored by the Norman Prince Neuroscience Institute Aging Brain Initiative

1998- Organizer for monthly Aging and Dementia Research Seminar Series
 1998 -- Sponsored by the Alzheimer's disease & Memory Disorders Center
 2012 -- Co-sponsored by the Norman Prince Neurosciences Institute Aging Brain Initiative

1998-2013 Supervisor/mentor, memory disorder clinic outpatient teaching rotation for Brown University Geriatric Psychiatry Fellowship Training Program

1999- Internship faculty member, Brown University Clinical Psychology Training Consortium
 2004- Research supervisor

2000- Supervisor/mentor, memory disorder clinic outpatient teaching rotation for Brown University Geriatric Medicine Fellowship Training Program

2001-2003	F-32 research fellowship co-sponsor (Rebecca Reddy, PhD)
2001-2008	Steering committee member, mentor, and lecturer for the Brown University T-32 Dementia Research Fellowship program
2003-2004	Director and mentor, Brown University Geriatric Neurology Fellowship (Anelyssa D'abreu, MD)
2005-	Teaching attending 1-2 months per year, ward and consultation services, for neurology and medical housestaff and medical students, Rhode Island Hospital.
2009-2014	K-08 research career award primary mentor (Lori Daiello, PharmD)
2013-2015	Predoctoral Fellowship award mentor (Michael Alosco, PhD)
2015-	Director, Rhode Island Hospital and Warren Alpert Medical School of Brown University Aging and Dementia Fellowship
2016-2018	Seth Margolis, PhD
2017-2018	Jonathan Drake, MD
2018-2020	Laura Korthauer, PhD

Exhibit B

Curriculum Vitae

Mary Ellen Quiceno, MD, FAAN

CURRENT TITLES: Associate Professor of Neurology at University of Texas Southwestern Medical Center
Associate Professor of Medical Education at TCU/UNTHSC School of Medicine

Chronology of Education

UNDERGRADUATE EDUCATION:

Years	Degree(s)	Institution, City, State
1990-1994	B.S. Psychobiology	University of Miami, Coral Gables, FL
1994-1995	None (graduate course in Neuroscience)	Florida Atlantic University, Boca Raton, FL

GRADUATE EDUCATION:

Years	Degree(s)	Institution, City, State
1995-1999	Doctor of Medicine	University of Miami, Miami, FL

POSTGRADUATE TRAINING:

Years	Training Level/Specialty	Institution, City, State
1999-2000	Internship, Internal Medicine	University of Texas Southwestern Medical Center, Dallas, TX
2000 – 2003	Residency, Neurology	University of Texas Southwestern Medical Center, Dallas, TX
8/2003 – 7/2004	Fellowship, Behavioral Neurology & Dementia	University of Texas Southwestern Medical Center, Dallas, TX

BOARD CERTIFICATIONS:

Year Certified	Board	Specialty
2004 2008 2014	American Board of Psychiatry & Neurology United Council for Neurologic Subspecialties American Board of Psychiatry & Neurology	Adult Neurology Behavioral Neurology & Neuropsychiatry Adult Neurology (recertification)

LICENSURE:

Year Granted	Agency/State and License #	Expiration/Comments
2003	Texas TMB, L6149	May 2019

PROFESSIONAL EXPERIENCE:

Years	Title(s)	Institution, City, State
8/2004 – 7/2005	Neurology Physician	Neurology Consultants of Dallas, Dallas, TX Texas Health Resources, Dallas, TX
7/2006 – 8/2015	Assistant Professor of Neurology	University of Texas Southwestern Medical Center, Dallas, TX
9/2015 to present	Associate Professor of Neurology	University of Texas Southwestern Medical Center, Dallas, TX
11/2017 to present	Associate Professor of Medical Education	TCU/UNTHSC School of Medicine, Ft. Worth, TX

TEACHING RESPONSIBILITIES:

Years	Course/Site	Role(s)
2006 to present	Neurology MS 3 Clerkship at UTSW	Preceptor at Zale and Clements University Hospitals and Parkland Hospital & Lecturer on Cognitive Disorders
2006 to present	Parkland Neurology Resident Continuity Clinic	Preceptor at Parkland Neurology Resident Clinic
2010 to present	Resident Lecture Series at UTSW	Lecturer in Dementias
2017 to present	MS 1 Brain & Behavior Course at UTSW	Lecturer in Cognitive Disorders & Dementia and Higher Cortical Functions
11/2017 to present	Neuromusculoskeletal Preclerkship Course at TCU/UNTHSC	Course Director

Honors and Awards

Years	Honor/Award Type	Institution
2003	Victor Rivera Resident Research Award	University of Texas Southwestern Medical Center, Dallas, TX
2012	Interprofessional Education Collaborative Curriculum Module Development Award	Association of American Medical Colleges funded by the Josiah Macy Jr. Foundation
2013	Travel award to present at the American Academy of Neurology Annual Meeting	University of Texas Southwestern Medical Center, Dallas, TX
2013	Woman of the Year	Altrusa International, Inc., Richardson, TX Club

Administrative Duties

Years	Title/Role,	Institution, City, State, Country
2007 - 2009	Section Head, General Neurology Section	University of Texas Southwestern Medical Center, Dallas, TX
2010 - 2017	Director, Cognitive & Memory Disorders Clinic	University of Texas Southwestern Medical Center, Dallas, TX
2015 to present	Fellowship Director, Behavioral Neurology & Dementia, accredited by the United Council on Neurologic Subspecialties	University of Texas Southwestern Medical Center, Dallas, TX
2016 to present	Co-Director, Combined Psychiatry & Neurology Residency Program	University of Texas Southwestern Medical Center, Dallas, TX

Professional & Scientific Committees

Years	Title/Role,	Institution, City, State, Country
2011 to present	Member, Steering Committee	NIA Alzheimer's Disease Cooperative Study (ADCS) group, UCSD, San Diego, CA, USA
2013 - present	Junior Faculty Representative for UTSW, Council of Faculty & Academic Societies	AAMC, Washington, DC, USA
2014 - 2016	Elected Member, Steering Committee Outreach, Recruitment & Education Cores	NIA Alzheimer's Disease Centers
2016 to present	Member, Steering Committee	Alzheimer's Therapeutic Research Institute (ATRI), USC, San Diego, CA, USA

Grant Review Committee/Study Sections

Years	Title/Role,	Institution, City, State, Country
2010 - 2017	Reviewer, Alzheimer's Disease Center Pilot Project Review Committee	University of Texas Southwestern Medical Center, Dallas, TX
2010 - 2017	Reviewer, Friends of the ADC (Alzheimer's Disease Center) Grant Review Committee	University of Texas Southwestern Medical Center, Dallas, TX
2015, 2016	NIH Ad Hoc R01 invited grant reviewer (Alzheimer's disease)	National Institutes of Health: National Institute of Aging

Symposium/Meeting Chair/Coordinator

Years	Title/Role,	Institution, City, State, Country
2012, 2013, 2014	Symposium Director, Alzheimer's Disease Center	University of Texas Southwestern Medical Center, Dallas, TX
2016	Chair, Steering Committee, NIA funded Alzheimer's Disease Centers, Education and Outreach Leaders Annual Meeting	National Institute of Aging, Chicago, IL, USA
2017 to present	Member, Planning Committee for research symposium planned for Jan. 2018	Alzheimer's Association, Greater Dallas Chapter, Dallas, TX, USA

PROFESSIONAL COMMUNITY ACTIVITIES

Years	Title/Role,	Institution/Organization, City, State,
2004 - 2008	Member, Medical Advisory Board	American Parkinson's Disease Association, North Texas Chapter, Dallas, TX
2011 - 2016	Board of Directors	Alzheimer's Association, Greater Dallas Chapter, Dallas, TX
2014 - 2016	Co-Director, Programs & Services Committee	Alzheimer's Association, Greater Dallas Chapter, Dallas, TX
2015 – present	Member, Medical Advisory Board	The Aging Mind Foundation, Dallas, TX

UNIVERSITY COMMUNITY ACTIVITIES

Years	Title/Role,	Institution/Organization, City, State,
2009	Ambulatory Clinics Epic Committee	University of Texas Southwestern Medical Center, Dallas, TX
2009	Interviewer, Neurology Residency	University of Texas Southwestern Medical Center, Dallas, TX
2012 - 2013	Interviewer for Medical School Applicants	University of Texas Southwestern Medical Center, Dallas, TX
2012 - 2015	Alternative Faculty Senate Representative for Neurology	University of Texas Southwestern Medical Center, Dallas, TX

Active Grants

2007 to 2017

P30 Neurobiology of Aging (Alzheimer's Disease Center)

NIA

Role: Investigator

2007 to 2017

TARCC (Texas Alzheimer's Research and Care Consortium)

State of Texas

Role: Investigator

2010 to present

ADNI: Alzheimer's Disease Neuroimaging Initiative

NIA

Role: Investigator

A4 Study: Anti-Amyloid Treatment in Asymptomatic Alzheimer's Disease

NIA & Eli Lilly

Role: Site PI

2016 to present

A Phase 3, Multicenter, Randomized, Double-blind, Placebo-controlled Study to Assess the Efficacy, Safety, and Tolerability of AVP-786 for the Treatment of Agitation in Patients with Dementia of the Alzheimer's Type.

Avanir

Role: Subinvestigator

Pending Grants or Studies

2017

A Phase 2b/3 Randomized, Double-blind, Placebo-Controlled, Parallel Group, Multicenter Study Investigating the Efficacy and Safety of JNJ-54861911 in Subjects who are Asymptomatic At Risk for Developing Alzheimer's Dementia (Early)

NIA & Janssen

Role: Site PI

2017

A Study of Lanabecestat (LY3314814) in Participants With Mild Alzheimer's Disease Dementia (DAYBREAK-ALZ)

Eli Lilly

Role: Site PI

2017

Multicenter, randomized, placebo-controlled study evaluating the efficacy and safety of the drug Prazosin. (PEACE AD)

NIA

Role: Site PI

2017

Advancing Research and Treatment for Frontotemporal Lobar Degeneration. (ARTFL)

NCATS and NINDS

Role: Investigator

2017

Dominantly Inherited Alzheimer Network Trial: An Opportunity to Prevent Dementia. A Study of Potential Disease Modifying Treatments in Individuals at Risk for or With a Type of Early Onset Alzheimer's Disease Caused by a Genetic Mutation. (DIAN-TU)

NIH

Past Grants

2007 to 2017

P30 Neurobiology of Aging (Alzheimer's Disease Center)

NIA

Role: Leader, Education & Outreach Core

2007 to 2016

P30 Neurobiology of Aging (Alzheimer's Disease Center)

NIA

Role: Co-Leader, Native American Satellite Clinic

2013 to 2017

Expedition 3: Effect of Passive Immunization on the Progression of Mild Alzheimer's Disease: Solanezumab (LY2062430) Versus Placebo.

Eli Lilly

Role: Site PI

2010 – 2015

A Phase 3 Study Evaluating Safety and Effectiveness of Immune Globulin Intravenous (IGIV 10%) for the Treatment of Mild-to-Moderate Alzheimer's Disease.

NIH & Baxter

Role: Site PI

Active Contracts

1/2017 to present (will end by 10/2017)

University of Texas at Dallas, Center for Brain Health

Role: Medical consultant

TEACHING RESPONSIBILITIES/ASSIGNMENTS

Course and Curriculum Development

Inclusive years (yyyy-yyyy)	Course title and number	Number of times the course is taught annually	Type of students taking the course (e.g., medical; dental; nursing; etc.	Number of students taking the course
2012 - 2016	Clinical Neurology	1	Medical (MS 2)	~200

Mary Quiceno, MD Page #6

Courses Directed

Inclusive years (yyyy-yyyy)	Course title and number	Number of times the course is taught annually	Type of students taking the course (e.g., medical; dental; nursing; etc.	Number of students taking the course
2012 - 2016	Clinical Neurology	1	Medical (MS 2)	~200
11/2017 to present	Neuromuskuloskeletal Medicine	1	Medical students (MS 2)	~60

Course Lectures

Inclusive years (yyyy-yyyy)	Course title and number	Number of times the course is taught annually	Type of students taking the course (e.g., medical; dental; nursing; etc.	Number of students taking the course
2012 - 2016	Stroke & Cerebrovascular Diseases	1	Medical (MS 2)	~200
2012 – 2016	Neuromuscular Diseases	1	Medical (MS 2)	~200
2012 – 2016	Multiple Sclerosis & Demyleniating Disorders	1	Medical (MS 2)	~200
2012 – 2016	Dementias	1	Medical (MS 2)	~200
2014 – 2016	Higher Cortical Functions: Language, Praxis, Vision	1	Medical (MS 1)	~200
2014 - 2016	Alzheimer's Disease	1	Medical (MS 1)	~200
2017	Higher Cortical Functions: Language, Praxis, Vision	Once every 18 months	Medical (MS 1)	~200
2017	Alzheimer's Disease	Once every 18 months	Medical (MS 1)	~200

Clinical Teaching

Inclusive years (yyyy-yyyy)	Course title and number/teaching topic	Number of times the course is taught annually	Type of students taking the course (e.g., medical; dental; nursing; etc.	Number of students taking the course
2006 to present	Neurology Clerkship	10 (I would participate 2-6 weeks per year)	Medical (MS 3 & 4)	2-4 students with each preceptor
2006 to present	Ambulatory Neurology	12 (I would participate 2-4 times yearly)	Medical (MS 4)	1 student per preceptor

Students Supervised

Inclusive years (yyyy-yyyy)	Student Name	Awards / Recognitions that student received during your supervision	Where did student go after completing training with you?
2017	Niyatee Samudra, MD & Alka Khera, MD	Mentoring	Completing Neurology residency at UTSW
2016	Danielle Rucker	Completed MS 2 research project	MS 3 at UTSW
2016	Rob Weir, MD		MS 2 at UTSW Combined Psychiatry & Neurology Residency
2016	Whitney Zentgraf, PharmD		Geriatric Clinical Pharmacy Specialist at Wesley Medical Center
2014	Becky Mahan, PharmD		Assistant Professor, Geriatrics Division, Texas Tech University HSC SOP- Abilene

Other Educational Activities

1. Quiceno ME. (2013). SAGE Southwestern Aging and Geriatrics Education Program Module: Cognitive Assessment in the elderly. Access at <http://www.gerisage.com/>.

PEER-REVIEWED JOURNAL ARTICLES (Bold/underline faculty member's name)

1. Torabi AM, **Quiceno M**, Mendeksohn DB, Powell CM. (2004) Multilevel Intramedullary Spinal

Mary Quiceno, MD Page #8

2. Kamm K, Simpkins S, Shah A, **Quiceno M**, Gupta R, Hoggatt Krumwiede K. Acknowledging Roles and Abilities of Team Members: A simulated geriatric care team meeting with the Coopers. MedEdPORTAL; 2013. Available from: www.mededportal.org/publication/9305
3. Wadsworth HE, Galusha-Glasscock JM, Womack KB, **Quiceno M**, Weiner MF, Hynan LS, Shore J, Cullum CM. (2016) Remote Neuropsychological Assessment in Rural American Indians With and Without Cognitive Impairment. *Archives of Clinical Neuropsychology*, 31(5):420-5.
4. O'Bryant SE, Edwards M, Johnson L, Hall J, Villarreal AE, Britton GB, **Quiceno M**, Cullum CM, Graff-Radford NR. (2016) A blood screening test for Alzheimer's disease. *Alzheimers Dement (Amst)*, 3:83-90.
5. Team-based science peer-reviewed journal articles:
<https://www.ncbi.nlm.nih.gov/sites/myncbi/1pcvAt9S0oxQf/bibliography/43483694/public/?sort=date&direction=descending>

NON PEER-REVIEWED JOURNAL ARTICLES

1. Lipton AM, Attmore J, **Quiceno ME**, Rubin CD (2004). Update on Alzheimer's Disease. *Dallas Medical Journal*, 90(1):16-21.
2. **Quiceno ME**, Whittington T (2017). Cognitive Function & Aging. *Healthy Living Made Simple*, Sept/Oct 2017: 22-23.

BOOK CHAPTERS

1. Zamrini E, **Quiceno ME** (2009). Chapter 14: Other Causes of Dementia. *The American Psychiatric Publishing Textbook of Alzheimer's Disease and Other Dementias*. American Psychiatric Publishing; Arlington, VA, USA.

UNPUBLISHED POSTER PRESENTATIONS

1. Smyth S, Daffner K, Barrett AM, **Quiceno M**, Rao-Frisch A, Lerner A (2012). The Mental Status Tree: an educational tool. American Academy of Neurology, New Orleans, LA USA.
2. Nguyen TP, Womack KW, **Quiceno, ME** (2015). Dementia with Lewy Bodies in American Indians: A case series. International Dementia With Lewy Bodies Conference, Miami, FL, USA.
3. Nguyen T, Brown S, Logan R, O'Suilleabhain P, Dewey R, **Quiceno M**, Khemani P. (2017). Instrumented Gait and Balance Analyses in Progressive Supranuclear Palsy and Mild Cognitive Impairment Compared with Parkinson Disease. American Academy of Neurology, Vancouver, Canada.
4. Bateman J, Daffner K, Gale S, Barrett A, Boeve B, Finney G, Gitleman D, Hart J, Lerner A, Meador K, **Quiceno M**, Voeller K, Whitney V, Kaufer D. Do We Practice What We Preach Regarding Clinical Cognitive Testing?: Results From an AAN Behavioral Neurology Section Survey. American Academy of Neurology, Vancouver, Canada.

ORAL PRESENTATIONS

Meeting Presentations

National

Year CME Author(s). Title of Presentation. Sponsoring Institution/Organization, City, State, Country.

2012	*	Kaufert D, Menendez M, Quiceno, ME. Co-presenter, Behavioral Neurology course American Academy of Neurology Annual Meeting, New Orleans, LA, USA.
2012		Quiceno ME. Chair & Emcee. Alzheimer's Disease Center Symposium. UTSW, Dallas, TX, USA.
2013	*	Quiceno ME. Interprofessional Education. AB Baker Education Section Symposium at the American Academy of Neurology Annual Meeting, San Diego, CA, USA.
2013		Quiceno ME. Chair & Emcee. 2 nd Annual Alzheimer's Disease Center Symposium. UTSW, Dallas, TX, USA.
2014		Quiceno ME. Chair & Emcee. 3 rd Annual Alzheimer's Disease Center Symposium. UTSW, Dallas, TX, USA.
2016		Quiceno ME. Chair of Meeting & Emcee. National ADC Education & Outreach Cores Annual Meeting, NIA, Chicago, IL, USA.

Regional/Local

Year	CME	Author(s). Title of Presentation. Sponsoring Institution/Organization, City, State, Country.
2014	*	Quiceno ME. Alzheimer Disease. North Texas Nurse Practitioners (NTNP) Annual CE Conference, Dallas, TX, USA.
2014	*	Quiceno ME, Martiez N, Logan R. Understanding & Identifying Stages of Dementia due to Alzheimer's Disease Workshop. 31st Annual Adult Protective Services Conference, Texas Dept. of Family & Protective Services, San Antonio, TX, USA.
2014	*	Quiceno, ME. Alzheimer's Disease UTSW Academic Clinical Provider Lecture Series for Nurse Practitioners & Physician Assistants. UTSW, Dallas, TX, USA.
2015	*	Quiceno, ME. Alzheimer Disease. 1 st Annual UTSW Neurotherapeutics Update, Dallas, TX.
2015		Quiceno, ME. Diminished Capacity: When Philanthropy and Mental Health Collide. Partnership for Philanthropic Planning. Dallas, TX, USA.
2015		Quiceno ME. Alzheimer disease. Dallas County Dental Society, Retired Dentists Seminar Series. Dallas, TX, USA.
2016		Quiceno ME. Diminished Capacity: When Philanthropy and Mental Health Collide. Dallas Estate Planning Council. Dallas, TX, USA.
2016		Quiceno ME. Maintain Your Brain: Update on Prevention of Memory Loss. Federal Judges Meeting (Eastern District of Texas), McKinney, TX, USA.
2017	*	Quiceno ME. Update on Alzheimer Disease. 5 th Annual Alzheimer's Disease Symposium. Texas Tech Health Sciences Center School of Nursing and Pharmacy, Abilene, TX, USA.
2017	*	Quiceno ME. Non-Alzheimer Disease Dementias. 3 rd Annual UTSW Neurotherapeutics Update. Dallas, TX.

Grand Rounds Presentations

Year	CME	Author(s). Title of Presentation. Sponsoring Institution/Organization, City, State, Country.
2008	*	Quiceno ME. Dementia Syndromes. Terrell State Hospital, Terrell, TX.
2009	*	Quiceno ME. Dementia Syndromes. Hendrick Medical Center Annual CME symposium, Abilene, TX.

Case 1:18-md-02388-AB Document 1-1 Filed 08/09/19 Page 16 of 27

2012	*	Quiceno ME. The Latest in Detecting & Preventing Memory Loss. Neurology Grand Rounds, Presbyterian Hospital of Dallas, Dallas, TX.
2012	*	Quiceno ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. East Texas Medical Center, Tyler, TX.
2012	*	Quiceno ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. UT Tyler, Tyler, TX.
2013	*	Quiceno ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. Internal Medicine Grand Rounds, Presbyterian Hospital of Dallas, Dallas, TX.
2013	*	Quiceno, ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. 23rd Annual Myron Weiner, MD Geriatric Psychiatry Conference, UTSW, Dallas, TX.
2013	*	Quiceno ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. East Texas Family Physician Annual Conference, Carthage, TX.
2016	*	Quiceno ME. Updates in Alzheimer Disease. UTSW Dept. of Family Medicine, Dallas, TX.
2016	*	Quiceno ME. Updates in Alzheimer Disease. UTSW APPs, Dallas, TX.
2017	*	Quiceno ME. Alzheimer Disease Detection. UT Tyler Dept. of Internal medicine, Tyler, TX.
2017	*	Quiceno ME. Alzheimer Disease Detection. Methodist Health System Dept. of Internal Medicine, Dallas, TX.

Outreach Presentations

Year	Author(s). Title of Presentation. Sponsoring Institution/Organization, City, State, Country.
2013	Quiceno ME. Alzheimer Disease: Diagnostic Tools & Emerging Treatments, Louisiana Alzheimer Association, Caregiver Conference, Shreveport, LA, USA.
2007	Quiceno ME. Neuropsychiatric Issues in Parkinson Disease American Parkinson Disease Association, Northeast Texas Fall Parkinson Disease Symposium, Dallas, TX, USA.
2007	Quiceno ME. Alzheimer Disease. UT Southwestern Women's Day Symposium, Dallas, TX, USA.
2010	Quiceno ME. Challenges in Moderate Stage Alzheimer Disease. Richard J Price Caregiver Symposium sponsored by the Greater Dallas Chapter of the Alzheimer's Association, Dallas, TX, USA.
2011	Quiceno ME. Memory and Cognitive Health Heritage Ranch, Fairview, TX, USA.
2011	Quiceno ME. End of Life Issues in Alzheimer Disease Richard J Price Caregiver Symposium sponsored by the Greater Dallas Chapter of the Alzheimer's Association, Dallas, TX, USA.
2012	Quiceno ME. African Americans & Alzheimer Disease Fabulous 50 to Sexy at 60 Lecture Series sponsored by the National Physician & Family Referral Project (NPFR), Dallas, TX, USA.
2012	Quiceno ME. The Latest in detecting & Preventing Memory Loss. CC Young, Dallas, TX. Featured speaker at the annual Body, Mind & Spirit Lecture Series, Dallas, TX, USA.
2013	Quiceno ME. Alzheimer Disease: Diagnostic Tools and Emerging Treatments. Alzheimer's Association North Central Texas Chapter Annual Caregiver Conference, Ft. Worth, TX, USA.
2014	Quiceno ME. Alzheimer Disease: Emerging Treatments. AWARE lecture series speaker (Alzheimer's Women's Association to Reach & Engage), Dallas, TX, USA.

Case 1:18-md-02328-AB Document 1-1 Filed 08/19/19 Page 12 of 12

2014 Quiceno ME. A Glimpse of the Future. Research Trends in Alzheimer's disease. Richard J Price Caregiver Symposium sponsored by the Greater Dallas Chapter of the Alzheimer's Association, Dallas, TX, USA.

2016 Quiceno ME. Update of the Research and Prevention of Alzheimer Disease. Mindshare 2016 Lecture series for the Alzheimer's Association, Longview, TX, USA.

2016 Quiceno ME. "Brain Smart". Mindshare 2016 Lecture series for the Alzheimer's Association, Dallas, TX, USA.

2016 Quiceno ME. Update on the Research and Prevention of Alzheimer Disease. Mindshare Lecture series for the Alzheimer's Association in Irving, TX, USA.

2017 Quiceno ME. Update on Alzheimer Disease. Community Conversations Project sponsored by the Greater Dallas Chapter of the Alzheimer's Association, CC Young, Dallas, TX, USA.

2017 Quiceno ME. AAIC Update. Midshare program sponsored by the Greater Dallas Chapter of the Alzheimer's Association, Longview, TX, USA.

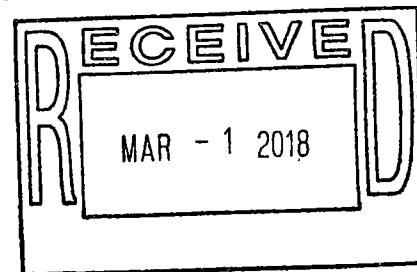
2017 Quiceno ME. Alzheimer Disease and Related Dementias. Dementia Essentials program sponsored by the Wellness Center for Older Adults, Plano, TX, USA.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323



Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

Civ. Action No.: 14-cv-00029-AB

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINT APPLICATION BY CO-LEAD CLASS COUNSEL AND COUNSEL FOR
THE NATIONAL FOOTBALL LEAGUE AND NFL PROPERTIES LLC FOR
APPOINTMENT OF TWO APPEALS ADVISORY PANEL MEMBERS AND
REMOVAL OF ONE APPEALS ADVISORY PANEL MEMBER**

Co-Lead Class Counsel and Counsel for the National Football League and NFL Properties LLC ("Counsel for the NFL Parties") hereby recommend for appointment by the Court two members of the Appeals Advisory Panel (the "AAP") and for the removal of one current AAP member.

The Settlement Agreement creates a panel of experts for the Settlement Program, the AAP. The AAP was originally contemplated to be composed of five (5) board-certified neurologists, board-certified neuro-surgeons, and/or other board-certified neuro-specialist

physicians that are agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court.

A member of the Appeals Advisory Panel will, among other things: (1) review certain Qualifying Diagnoses made prior to the Effective Date of the Settlement Agreement, pursuant to Section 6.4 of the Settlement Agreement; (2) review and decide whether a Retired NFL Football Player has a given level of Neurocognitive Impairment when the Qualified BAP Providers who examined the Retired NFL Football Player are not in agreement and the BAP Administrator elects, in its discretion, to refer the matter pursuant to Section 5.13 of the Settlement Agreement; and (3) be available to advise the Court or the Special Masters with respect to medical aspects of the Class Action Settlement.

On April 14, 2017, Co-Lead Class Counsel and Counsel for the NFL Parties submitted their Application for Appointment of the Appeals Advisory Panel and Appeals Advisory Panel Consultants (D.E. 7479). On May 4, 2017, the Court Appointed the AAP and Appeals Advisory Panel Consultants (D.E. 7603). The AAP members are Dr. James Brewer, Dr. David Geldmacher, Dr. Stephan Mayer, Dr. Aaron McMurtray and Dr. Rhonna Shatz.

In consultation with the Claims Administrator, Co-Lead Class Counsel and Counsel for the NFL Parties have determined that one of the AAP members, Dr. Mayer, should be replaced¹ and that at least one additional AAP member is appropriate given the demands

¹ The replacement of an AAP member may be made by joint motion by Co-Lead Class Counsel and Counsel for the NFL Parties or for cause by motion by either Co-Lead Class Counsel or Counsel for the NFL Parties. *See* Settlement Agreement § 9.8(a)(4). Co-Lead Class Counsel and Counsel for the NFL Parties agree to the replacement of Dr. Mayer.

on the time of the AAP in the implementation and on-gong administration of the Settlement.

Accordingly, having jointly identified and consulted with numerous additional candidates for the AAP, Co-Lead Class Counsel and Counsel for the NFL Parties recommend for appointment Dr. Brian Ott and Dr. Mary Quiceno. Dr. Ott is the Director of the Alzheimer's Disease and Memory Disorders Center at Rhode Island Hospital and Professor of Neurology at the Warren Alpert Medical School of Brown University, and among other distinctions, serves on the editorial board for Alzheimer's & Dementia: Diagnosis, Assessment and Disease Monitoring, on the Steering Committee of the Alzheimer's Disease Cooperative Study, and on the Executive Committee for the Rhode Island State Plan for Alzheimer's Disease.

Dr. Quiceno will soon begin her tenure as Associate Professor of Neurology in the Department of Internal Medicine, Center for Geriatrics at University of North Texas Health Science Center after completing over 11 years of service as an Associate Professor of Neurology at the University of Texas Southwestern Medical Center where she also served as the Director of the Cognitive and Memory Disorders Clinic and the inaugural Director of the United Council on Neurologic Subspecialties Fellowship for Behavioral Neurology & Dementia, and as the Co-Director for the Combined Psychiatry & Neurology Residency Program. The current curriculum vitae for each of the recommended candidates for the AAP are attached hereto as Exhibit "A" (Dr. Ott) and Exhibit "B" (Dr. Quiceno).

Based on the conversations the Parties have had with these two candidates and consideration of their qualifications, including their professional and academic education, training and experience, Co-Lead Class Counsel and Counsel for the NFL Parties

respectfully request that the Court appoint Drs. Ott and Quiceno to serve on the AAP. Based on their discussions with the Claims Administrator and consideration of the needs of the Settlement, Co-Lead Class Counsel and Counsel for the NFL Parties respectfully request that the Court approve the removal of Dr. Mayer from the AAP.

It is so **STIPULATED AND AGREED**,

By: 

Date: 2/27/2018

Christopher Seeger
SEEGER WEISS LLP
77 Water Street
New York, NY 10005
Phone: (212) 584-0700
cseeger@seegerweiss.com

Co-Lead Class Counsel

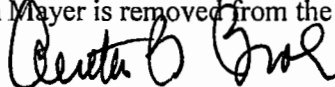
By: 

Date: 2/27/18

Brad S. Karp
**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: (212) 373-3000
bkarp@paulweiss.com

Counsel for the NFL Parties

It is so **ORDERED**, this 5 day of March, 2018, that the recommended candidates for the AAP are **APPROVED** and Dr. Stephan Mayer is removed from the AAP.



ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

V.

**National Football League and
NFL Properties, LLC,
Successor-in-interest to
NFL Properties, Inc.,
Defendants.**

THIS DOCUMENT RELATES TO:
ALL ACTIONS

ORDER

Pursuant to the Courts continuing jurisdiction over this action as set out in the Courts Amended Final Order and Judgment (Doc. No. 6534, paragraph 17), it is hereby **ORDERED** that the attached rules governing Attorney's Liens are **ADOPTED**.

BY THE COURT:

DAVID R. STRAWBRIDGE / USMJ
David R. Strawbridge, USMJ
Date: March 6, 2018

Approved.

Approved. Centia B Broder

Anita B. Brody, J.

Date: March 6, 2008



TABLE OF CONTENTS

Page

TITLE I: GENERAL.....1

Rule 1. Purpose of These Rules	1
Rule 2. Court Approval of These Rules.....	1
Rule 3. Definitions Used in These Rules	1
Rule 4. Referral to Magistrate Judge	3
Rule 5. How Things are Submitted and Served Under These Rules	3
Rule 6. How to Count Time Periods and the Date Something is Submitted Under These Rules	3

TITLE II: ASSERTION AND SUBMISSION OF ATTORNEYS' LIENS4

Rule 7. Required Notice of Attorney's Lien Filed in the Court	4
Rule 8. Required Proof for an Attorney's Lien and Notice to the Settlement Class Member.....	4
Rule 9. Attorney's Liens by an Attorney Currently Representing the Settlement Class Member.....	5
Rule 10. Resolution of Dispute Over Attorney's Lien	5

TITLE III: DISPUTE RESOLUTION PROCESS.....5

Rule 11. Attempts to Reach an Agreement.....	5
Rule 12. Agreement to Consent Jurisdiction	5
Rule 13. Issues in Dispute.....	5
Rule 14. Statement of Dispute	6
Rule 15. Response Memorandum	7
Rule 16. Timing of Document Submissions.....	7
Rule 17. Record of Dispute.....	8
Rule 18. Appointment of Counsel	8
Rule 19. Hearing	8
Rule 20. Hearing Procedure.....	9
Rule 21. Withdrawal of Dispute	9
Rule 22. Magistrate Judge Report and Recommendation.....	10
Rule 23. Final Decision of the Court	10
Rule 24. Change of Address	10
Rule 25. Exclusive Retained Jurisdiction	10
Rule 26. Implementation of These Rules.....	10

EXHIBITS

Exhibit A: Notice, Consent, and Reference of an Attorney's Lien Dispute to a Magistrate Judge for a Final Decision
Exhibit B: Statement of Fees and Expenses
Exhibit C: Schedule of Document Submissions
Exhibit D: Hearing Schedule
Exhibit E: Withdrawal of Dispute

RULES GOVERNING ATTORNEYS' LIENS

TITLE I: GENERAL

Rule 1. Purpose of These Rules. These Rules govern the process for asserting Attorneys' Liens and resolving Disputes as to whether the attorney lienholder's fees and/or costs, if any, may be awarded from the affected Settlement Class Member's Award. The resolution of the Dispute will necessarily take into account and resolve the extent of any other attorney's fees and/or costs to be awarded from the Settlement Class Member's Award.

Rule 2. Court Approval of These Rules. The Court has approved these Rules pursuant to its continuing and exclusive jurisdiction under Article XXVII of the Settlement Agreement and Paragraph 17 of the Court's May 8, 2015 Amended Final Approval Order and Judgment (ECF No. 6534). The Court may amend these Rules at any time.

Rule 3. Definitions Used in These Rules. All capitalized terms used in these Rules will have the meanings given to them in the Settlement Agreement. In addition:

- (a) "Attorney's Lien" means a Lien asserted by any person or entity for attorney's fees and/or costs for work in connection with representing Settlement Class Members in the NFL concussion litigation and/or in the Settlement Program. The fees and/or costs sought by an attorney lienholder must not include tasks undertaken for the Settlement Class as a class, or for tasks performed by an attorney that replicate such common benefit tasks, or for any other tasks performed for the common benefit of the Settlement Class Members. The payment of these common benefit fees and/or costs are addressed through Article XXI of the Settlement Agreement and as addressed in the Court's April 22, 2015 Opinion under the heading "Attorney's Fees." (ECF No. 6509).
- (b) "Award" means a Monetary Award, Supplemental Monetary Award, or a Derivative Claimant Award.
- (c) "Court" is defined in the Settlement Agreement in Section 2.1(x).
- (d) "Dispute" means any disagreement between the Parties over an Attorney's Lien as to the reasonableness and amount of the fees and/or costs sought by the attorney lienholder(s) and any other matter relating to attorney's fees and costs the Court determines are necessary to ensure that the rights of the Parties are protected.
- (e) "District Judge" means the Honorable Anita B. Brody, U.S.D.J., or any successor judge.
- (f) "Hearing Schedule" is served by the Claims Administrator to the Parties establishing the time and place of the hearing and the hearing procedures, as described in Rules 19 and 20.
- (g) "Magistrate Judge" means the Honorable David Strawbridge, U.S.M.J., appointed by the District Judge in the April 4, 2017 Order to handle all Attorney's Lien Disputes (ECF No. 7446) or any other United States Magistrate Judge for the Eastern District of Pennsylvania appointed by subsequent order of the District Judge for this purpose.

- (h) “Notice of Lien” is a notice issued by the Claims Administrator to the Settlement Class Member and the attorney lienholder providing notice of an Attorney’s Lien assertion and copies of the required proof, and giving the Settlement Class Member at least 20 days to consent to or dispute the Lien.
- (i) “Notice of Duty to Resolve Lien Dispute” is a notice issued by the Claims Administrator to the Settlement Class Member who disputes or fails to consent to an Attorney’s Lien and the attorney lienholder explaining that the Claims Administrator will withhold enough money to pay the Lien, to the extent funds are available, until the Dispute is resolved by agreement or the Court.
- (j) “Party or Parties to the Dispute” means the current attorney on behalf of a represented Settlement Class Member or an unrepresented Settlement Class Member on his or her own behalf, and any attorney lienholder(s), hereinafter referred to as “Party” or “Parties.” The Claims Administrator is not a Party to the Dispute.
- (k) “Record” is the compilation of information provided by the Claims Administrator to the Magistrate Judge for his consideration when resolving a Dispute, as described in Rule 17.
- (l) “Report and Recommendation” is the Magistrate Judge’s recommendation to the District Judge for resolution of the Dispute, as described in Rule 22.
- (m) “Response Memorandum” is the information submitted to the Claims Administrator by each Party in response to the Statement(s) of Dispute from other Parties, as described in Rule 15.
- (n) “Settlement Class Member” (“SCM”) means a Retired NFL Football Player, the Representative Claimant of a deceased or incompetent Retired NFL Football Player, or a Derivative Claimant.
- (o) “Settlement Program” means the program for benefits for SCMs established under the Settlement Agreement.
- (p) “Schedule of Document Submissions” is the schedule issued by the Claims Administrator to the Parties setting the deadlines for the submission of the Parties’ Statements of Dispute and Response Memoranda, as described in Rule 16.
- (q) “Statement of Dispute” is the information about the Dispute submitted by the Parties to the Claims Administrator, as described in Rule 14.
- (r) “Statement of Fees and Expenses” is the form that an SCM’s attorney must sign and return to the Claims Administrator pursuant to the Court’s September 7, 2017 Order (ECF No. 8358) and Rule 14 verifying his or her attorney’s fees and/or costs, that he or she has thoroughly explained those fees and/or costs to the SCM, and confirming the SCM does not dispute those fees and/or costs.

- (s) “Withdrawal of Lien Dispute” is a form that must be submitted by all Parties to the Dispute to withdraw from the dispute process and that sets forth the specific agreement for the disbursement of the withheld funds, as described in Rule 21.

Rule 4. Referral to Magistrate Judge. The District Judge has referred all Attorneys’ Lien Disputes to the Honorable David Strawbridge, U.S.M.J., pursuant to the Court’s April 4, 2017 Order (ECF No. 7446) and as authorized under 28 U.S.C. § 636(b)(3). The Court will issue a final decision in accordance with these Rules.

Rule 5. How Things are Submitted and Served Under These Rules. Where these Rules require service to the Claims Administrator, such service shall be by one of the following methods:

- (a) Email to ClaimsAdministrator@NFLConcussionSettlement.com, by a secured and encrypted method and include “ATTN: NFL Liens” in the subject line;
- (b) Facsimile to (804) 521-7299, ATTN: NFL Liens;
- (c) Mail to NFL Concussion Settlement, Claims Administrator, P.O. Box 25369, Richmond, VA 23260, ATTN: NFL Liens; or
- (d) Delivery by overnight carrier to NFL Concussion Settlement, c/o BrownGreer PLC, 250 Rocketts Way, Richmond, VA 23231, ATTN: NFL Liens.

Rule 6. How to Count Time Periods and the Date Something is Submitted Under These Rules.

- (a) How to Count Time Periods: Any time period set by these Rules will be computed as follows, which is based on Rule 6 of the Federal Rules of Civil Procedure:
 - (1) Do not count the day that starts the running of any period of time. The first day of the period is the day after this trigger day.
 - (2) Count every day, including Saturdays, Sundays, and legal holidays.
 - (3) Count the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - (4) Legal holidays are New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President of the United States or the United States Congress.
 - (5) An additional three days will be added to any time period specified by these Rules for an action or submission where the acting or responding party was served by mail with the Notice or submission requiring action or response rather than by service on a Portal or delivery.

- (b) How to Mark the Date Something is Submitted: Any document submitted by email or facsimile will be considered submitted on the date emailed or faxed at the local time of the submitting Party. Documents submitted by mail will be considered submitted on the postmark date. Documents submitted by overnight delivery will be considered submitted on the date delivered to the carrier.

TITLE II: ASSERTION AND SUBMISSION OF ATTORNEY'S LIEN

Rule 7. Required Notice of Attorney's Lien Filed in the Court. If an attorney wants to assert an Attorney's Lien, or otherwise present a claim against a SCM in any way related to a SCM's Award, he or she must file a notice, but notice only, of Attorney's Lien in the United States District Court for the Eastern District of Pennsylvania, Case No.: 2:12-md-02323-AB. An Attorney's Lien filed with any other court is not binding on the Claims Administrator or effective in the Settlement Program and will not be considered by the Court.

Rule 8. Required Proof for an Attorney's Lien and Notice to the Settlement Class Member. An attorney who asserts an Attorney's Lien is required to provide the following information to the Claims Administrator:

- (a) Proof of Attorney's Lien: The Claims Administrator will require an attorney lienholder to submit such information as is necessary to establish the existence of the asserted Attorney's Lien. That documentation must include:
- (1) Information to identify the Retired NFL Football Player or Derivative Claimant against whom the Attorney's Lien is alleged (such as the SCM's full name, Social Security Number, Taxpayer Identification Number, Foreign Identification Number, or Settlement Program ID);
 - (2) The amount of the asserted Attorney's Lien;
 - (3) The notice of Attorney's Lien filed in the United States District Court for the Eastern District of Pennsylvania, Case No.: 2:12-md-02323-AB as required by Rule 7;
 - (4) A copy of the attorney's retainer agreement signed by the SCM; and
 - (5) The dollar amount of the attorney's costs if the attorney is seeking reimbursement of costs in addition to fees.
- (b) The Claims Administrator will review the information and send the lienholder an email or letter to acknowledge receipt of the assertion, confirm the lienholder's contact information, and inform the lienholder if it needs further information or documentation about the Lien.
- (c) To honor the Lien, the Claims Administrator must receive complete claimant-identifying information and documentary proof before it begins processing the Award.
- (d) Notice to the SCM: If the Claims Administrator receives adequate proof of the Attorney's Lien and the affected SCM submits a Claim Package or Derivative Claim Package, the

Claims Administrator will issue a Notice of Lien to the SCM and the attorney lienholder before it issues any payment to the SCM. The SCM's Notice of Lien shall include copies of the proof of the Attorney's Lien and provide the SCM with at least 20 days to consent to or dispute the Attorney's Lien.

Rule 9. Attorney's Lien by an Attorney Currently Representing the Settlement Class Members. An SCM's current attorney who believes that other competing Lien payments, including but not limited to those for medical expenses and services, other attorney's fees and/or costs, child support, unpaid taxes, and judgment debts, may interfere with recovery of his or her attorney's fees and/or costs must assert a Lien in accordance with Rules 5, 7, and 8 to protect his or her interests.

Rule 10. Resolution of Dispute Over Attorney's Lien. If the SCM fails to consent to or disputes the Attorney's Lien, the Claims Administrator shall withhold an appropriate amount sufficient to pay the Attorney's Lien as well as the fees and/or costs of any current attorney, to the extent funds are available, and issue a Notice of Duty to Resolve Lien Dispute to the SCM and the attorney lienholder. The Notice advises that the Claims Administrator is not a Party to the Dispute and does not have a decision-making role in how the Dispute will be resolved. It also explains that the Claims Administrator will withhold adequate funds to pay the Lien, to the extent funds are available, until the Dispute is resolved.

The Claims Administrator shall refer the Dispute to the Honorable David Strawbridge, U.S.M.J., or another United States Magistrate Judge for the Eastern District of Pennsylvania. If consent is given pursuant to Rule 12, the Magistrate Judge will issue a final decision in accordance with these Rules and as authorized by 28 U.S.C. § 636(c). Otherwise, the Magistrate Judge will prepare a Report and Recommendation in accordance with these Rules and pursuant to the Court's April 4, 2017 Order (ECF No. 7446) and as authorized by 28 U.S.C. § 636(b)(3).

The Claims Administrator shall disburse the withheld funds in accordance with the Court's final decision.

TITLE III: DISPUTE RESOLUTION PROCESS

Rule 11. Attempts to Reach an Agreement. The Parties must make reasonable efforts to resolve the Dispute by agreement before and during the dispute resolution process.

Rule 12. Agreement to Consent Jurisdiction. Pursuant to 28 U.S.C. § 636(c), the Parties may consent to have the Magistrate Judge enter a final order as to the resolution of a Dispute by signing and returning to the Claims Administrator the Notice, Consent, and Reference of an Attorney's Lien Dispute to a Magistrate Judge for a Final Decision (Exhibit A). If such consent is given, Rule 22 will no longer apply and the Magistrate Judge's determination will become the final decision of the Court as described in Rule 23.

Rule 13. Issues in Dispute. The issues in dispute will be limited to those originally raised by the Parties in the Statements of Dispute (see Rule 14) absent some extraordinary circumstance.

Rule 14. Statement of Dispute.

- (a) Each attorney lienholder and the current attorney, if the SCM is represented, must serve the Claims Administrator with a Statement of Dispute including:
- (1) A statement of all issues in dispute;
 - (2) A chronology of the tasks performed by the attorney, the date each task was performed, and the time spent on each task;
 - (3) A list of costs with a brief explanation of the purpose of incurring these costs and the date the costs were incurred;
 - (4) The relief sought;
 - (5) A summary of the attempts to reach an agreement with the opposing Party;
 - (6) Any exhibits; and
 - (7) A statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Statement of Dispute is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or any other remedy available by law. The statement may be signed by a current attorney on behalf of the SCM. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.
- (b) The current attorney must also include with the Statement of Dispute a copy of his or her retainer agreement signed by the SCM, any modifications to that agreement, and a signed copy of the Statement of Fees and Expenses (Exhibit B).
- (c) If the SCM is not represented by a lawyer in this process, he or she must serve the Claims Administrator with a Statement of Dispute that:
- (1) Explains his or her best understanding of the issues;
 - (2) Provides a summary of the attempts to reach an agreement with the attorney lienholder;
 - (3) Includes any information that he or she believes would be useful to the Magistrate Judge about the work performed, any suggested resolution, and any documents or exhibits he or she wants the Magistrate Judge to consider; and
 - (4) Includes a statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Statement of Dispute is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this

process may result in fines, sanctions, and/or any other remedy available by law. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.

Rule 15. Response Memorandum. Each Party may serve the Claims Administrator with a Response Memorandum to the opposing Party's Statement of Dispute. Each Response Memorandum must contain a statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Response Memorandum is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or any other remedy available by law. The statement may be signed by a current attorney on behalf of the SCM. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.

If a Party fails to submit a Statement of Dispute, the opposing Party may not submit a Response Memorandum unless requested by the Magistrate Judge. After a Response Memorandum has been submitted, a Party may not provide any further submissions unless requested by the Magistrate Judge. Any request for a hearing must be made in the Response Memorandum.

Rule 16. Timing of Document Submissions. The Claims Administrator will serve the Parties with a Schedule of Document Submissions (Exhibit C) as determined by the Magistrate Judge.

- (a) Statement of Dispute: Each Party must submit a Statement of Dispute within 30 days after the date of the Schedule of Document Submissions. The Claims Administrator will serve each Party with the opposing Party's Statement of Dispute.
- (b) Response Memorandum: Each Party may submit a Response Memorandum within 15 days after the date the Claims Administrator serves the Statements of Dispute on the Parties. The Claims Administrator will serve each Party with the opposing Party's Response Memorandum.
- (c) The Record: Within 20 days after the date the Claims Administrator serves the Response Memoranda on the Parties, the Claims Administrator will provide the complete Record to the Magistrate Judge, along with a statement of the amount of any Award funds withheld pending resolution of the Dispute.
- (d) Exclusions from the Record: Any documents received after the Claims Administrator provides the Record to the Magistrate Judge will be excluded from the Record, unless directed otherwise by the Magistrate Judge.
- (e) Extensions of Time: Extensions of deadlines are discouraged. Upon written request of a Party and a showing of good cause, however, the Magistrate Judge may exercise discretion to extend or modify any submission deadline established by these Rules. Before any such request is presented to the Magistrate Judge, the Parties must confer and advise the Magistrate Judge of any opposition to the request. The Magistrate Judge will issue a notice of any extension or modification of a submission deadline. The Claims Administrator will serve the notice on the Parties.

Rule 17. Record of Dispute.

(a) The Record to be considered by the Magistrate Judge will consist of:

- (1) A copy of the Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination;
- (2) The Notice of Lien to the SCM with the attachments (a copy of the attorney lienholder's retainer agreement signed by the SCM, a copy of the notice of Attorney's Lien filed in the Court, and the amount of any costs provided by the attorney lienholder);
- (3) The SCM's response, if any, to the Notice of Lien that he or she disputes the Lien;
- (4) If the SCM is represented, a copy of the current attorney's retainer agreement signed by the SCM and a signed copy of the Statement of Fees and Expenses as provided in Rule 14;
- (5) The Statements of Dispute from each Party as provided in Rule 14;
- (6) The Response Memoranda from each Party as provided in Rule 15; and
- (7) Any additional evidence produced by either Party in response to a request of the Magistrate Judge.

(b) The Claims Administrator will assemble the complete Record and provide it to the Magistrate Judge, along with a statement of the amount of the Award withheld pending resolution of the Dispute.

Rule 18. Appointment of Counsel. The Magistrate Judge has the discretion to appoint counsel for any unrepresented SCM pursuant to the Court's January 8, 2018 Order (ECF No. 9561). An unrepresented SCM must serve the Claims Administrator with a written request showing good cause for appointment of counsel. The Claims Administrator will present the request to the Magistrate Judge and inform the SCM of the determination.

Rule 19. Hearing.

- (a) **Hearing Request:** Any Party may request a hearing with the Magistrate Judge, provided that such request is submitted in its Response Memorandum, as is required by Rule 15. The Magistrate Judge in his own discretion may order a hearing, if he determines that such proceeding would aid him in the resolution of the Dispute. The Magistrate Judge will determine if such hearing will be in-person, by video conference, or by telephone.
- (b) **Hearing Schedule:** If the Magistrate Judge determines a hearing is necessary, the Claims Administrator will serve a Hearing Schedule (Exhibit D) on the Parties. The hearing will be scheduled promptly, but no sooner than 20 days after the date of the Hearing Schedule. No provision of this Schedule will be modified except upon written request for modification within 14 days of the date of this Schedule. Thereafter, this Schedule may be modified only

- Rule 20. Hearing Procedure.** If the Magistrate Judge orders a hearing, the following procedure will apply.

- Rule 21. Withdrawal of Dispute.** If the Parties reach an agreement at any time before the Magistrate Judge issues a decision, and each Party serves a signed Withdrawal of Lien Dispute (“Withdrawal”) (Exhibit E) on the Claims Administrator, the process will end. The Withdrawal may be signed by a current attorney on behalf of the SCM. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature. The Claims Administrator will pay the withheld portion of the Award to the SCM or to the current attorney (if the SCM is represented) and any attorney lienholder(s) as agreed to and stated in the Withdrawal, and according to the provisions of the Settlement Agreement and all relevant Court orders.

Rule 22. Magistrate Judge Report and Recommendation.

- (a) Issuance: The Magistrate Judge will issue a Report and Recommendation after consideration of the Record and any evidence properly submitted during a hearing.
- (b) Content: The Report and Recommendation will be in writing and will set forth a recommended disposition of the Dispute.
- (c) Service: The Claims Administrator will serve the Report and Recommendation on the Parties.
- (d) Objections to Report and Recommendation: In accordance with Fed. R. Civ. P. 72(b)(2), the Parties will have 14 days from the date the Claims Administrator serves the Report and Recommendation to file specific written objections with the District Judge. The Claims Administrator will serve copies of the written objections on the Parties. The Parties will have 14 days from the date the Claims Administrator serves any objections to file a written response to the opposing Party's objections. The Claims Administrator will serve copies of any responses to the objections on the Parties.

Rule 23. Final Decision of the Court. Except where Rule 12 may apply, the District Judge will, in accordance with Fed. R. Civ. P. 72(b)(3), enter a final decision after consideration of the Report and Recommendation from the Magistrate Judge and any objections from the Parties. Where Rule 12 does apply, the Magistrate Judge will issue the final decision of the Court.

Upon issuance of the final decision by the Court, the Record will be transferred to the Claims Administrator. The Claims Administrator will serve copies of the final decision on the Parties. Any Party may appeal the final decision.

Within 7 days after the date of the final decision, the Court may exercise discretion to modify or correct the final decision if there was a mathematical error or an obvious material mistake in computing the amount to be paid to the attorney lienholder and/or the SCM.

After any timely appeals are resolved, the Claims Administrator will disburse the withheld funds in accordance with the final decision and the provisions of the Settlement Agreement and Court orders regarding implementation.

Rule 24. Change of Address. If a Party changes its mailing address, email address, or phone number at any time during this process, the burden will be on that Party to notify the Claims Administrator and the opposing Party immediately. The Claims Administrator will keep all addresses on file, and the Parties may rely on these addresses until the Claims Administrator notifies them of a change.

Rule 25. Exclusive Retained Jurisdiction. The Court retains continuing and exclusive jurisdiction over the interpretation, implementation, and enforcement of these Rules.

Rule 26. Implementation of these Rules. The Claims Administrator has discretion to develop and maintain internal policies and procedures it deems necessary to implement these Rules.

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 12-md-02322 (E.D. Pa.)**NOTICE, CONSENT, AND REFERENCE OF AN ATTORNEY'S LIEN DISPUTE
TO A MAGISTRATE JUDGE FOR A FINAL DECISION****I. PARTIES TO THE DISPUTE**

Dispute: Settlement Class Member v. Attorney Lienholder

Case No.: XXXXX

II. NOTICE OF A MAGISTRATE JUDGE'S AVAILABILITY

A United States Magistrate Judge of this Court is available to conduct all proceedings and enter a final decision dispositive of each Dispute. A Magistrate Judge may exercise this authority to resolve a Dispute over an Attorney's Lien only if all Parties voluntarily consent.

III. CONSENT

Both Parties to the Dispute may consent to have the Dispute referred to a Magistrate Judge for entry of a final decision, or either Party may withhold consent without adverse substantive consequences. The name of any Party withholding consent will not be revealed to a Magistrate Judge who may otherwise be involved with your case.

If either Party does not consent to have the Dispute referred to a Magistrate Judge for final disposition, the District Judge will enter a final decision resolving the Dispute after consideration of the Report and Recommendation from the Magistrate Judge and any objections from the Parties.

IV. CERTIFICATION

Both the Settlement Class Member or his or her attorney, if represented, and attorney lienholder must submit a signed copy of this form to the Claims Administrator to allow a Magistrate Judge to enter a final order resolving the Dispute. The statement may be signed by a current attorney on behalf of the Settlement Class Member. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.

By signing below, the following Party consents to have a United States Magistrate Judge conduct any and all proceedings and enter a final decision as to the Notice of Attorney's Lien (ECF No.).

Signature				Date	
Printed Name	First	M.I.	Last		
Law Firm					



STATEMENT OF ATTORNEY FEES AND EXPENSES

This Statement of Attorney Fees and Expenses ("Statement") is required pursuant to the Court's 9/7/17 Orders. An attorney from each law firm subject to Funding Requests after the 9/7/17 Orders must complete one Statement for each Settlement Class Member the firm represents within 10 days after the Claims Administrator's request.

Submit the Statement(s) to the Claims Administrator by email to the assigned Law Firm Contact.

I. SETTLEMENT CLASS MEMBER INFORMATION

Settlement Program ID			
Name	First	M.I.	Last
Settlement Class Member Type			
Primary Counsel			

II. ATTORNEY FEES AND EXPENSES

A.	Contingency Fee Percentage <u>Note:</u> As ordered by the Court, the Claims Administrator must subtract 5% of the Award for Common Benefit Fees, which will reduce your percentage by 5% of the Award. When you list your fee percentage on this form, list your full fee percentage. We will then make the applicable 5% adjustment. If your law firm is under a flat fee or hourly fee arrangement with this Settlement Class Member, indicate the total amount of fees incurred.	
B.	Amount of Expenses	

III. VERIFICATION OF REASONABLENESS OF FEES AND EXPENSES

By signing below, I verify that my fees and expenses in connection with my representation of the Settlement Class Member in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-2323 (E.D. Pa.) are reasonable, that I have thoroughly explained my fees and expenses to the Settlement Class Member, and that he or she does not dispute my fees or expenses.

IV. CERTIFICATION

By signing below, I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that all information provided in this Statement of Attorney Fees and Expenses is true and correct to the best of my knowledge, information and belief.

Signature		Date	
Printed Name	First	M.I.	Last
Law Firm			



**ATTORNEY'S LIEN DISPUTE RESOLUTION PROCESS
SCHEDULE OF DOCUMENT SUBMISSIONS**

DISPUTE: Settlement Class Member v. Attorney Lienholder
CASE NO: XXXXXX

In accordance with Rule 16 of the Rules Governing Attorneys' Liens (the "Rules"), each Party must comply with the following Schedule of Document Submissions:

1. Statement of Dispute: Within 30 days of the date of this Schedule or by Month Day, 2018:
 - (a) Each attorney lienholder and the current attorney, if the Settlement Class Member is represented, must serve the Claims Administrator with a Statement of Dispute including:
 - (1) A statement of all issues in dispute;
 - (2) A chronology of the tasks performed by the attorney, the date each task was performed, and the time spent on each task;
 - (3) A list of costs with a brief explanation of the purpose of incurring these costs and the date the costs were incurred;
 - (4) The relief sought;
 - (5) A summary of the attempts to reach an agreement with the opposing Party;
 - (6) Any exhibits; and
 - (7) A statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Statement of Dispute is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or any other remedy available by law. The statement may be signed by a current attorney on behalf of the Settlement Class Member. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.
 - (b) The Settlement Class Member's current attorney must also include with the Statement of Dispute:
 - (1) A copy of his or her retainer agreement signed by the Settlement Class Member and any modifications to that agreement; and
 - (2) A signed copy of the Statement of Fees and Expenses.

(c) If the Settlement Class Member is not represented, he or she must serve the Claims Administrator with a Statement of Dispute that:

- (1) Explains his or her best understanding of the issues;
- (2) Provides a summary of the attempts to reach an agreement with the attorney lienholder;
- (3) Includes any information that he or she thinks would be useful to the Magistrate Judge about the work performed, any suggested resolution, and any documents or exhibits he or she wants the Magistrate Judge to consider; and
- (4) Includes a statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Statement of Dispute is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or any other remedy available by law. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.

2. Response Memorandum: Within 15 days after the Claims Administrator serves the Statements of Dispute on the Parties, each Party may serve the Claims Administrator with a Response Memorandum to the opposing Party's Statement of Dispute. Each Response Memorandum must contain a statement signed by the submitting Party declaring under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information submitted in the Response Memorandum is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or any other remedy available by law. The statement may be signed by a current attorney on behalf of the Settlement Class Member. The signature may be an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature.

If a Party fails to submit a Statement of Dispute, the opposing Party may not submit a Response Memorandum unless requested by the Magistrate Judge. After a Response Memorandum has been submitted, a Party may not provide any further submissions unless requested by the Magistrate Judge.

Any request for a hearing must be made in the Response Memorandum.

3. Extensions of deadlines are discouraged. A request for a modification or extension of a submission deadline must be made in writing with a showing of good cause. Before any such request is presented to the Magistrate Judge, the Parties must confer and advise the Magistrate Judge of any opposition to the request.
4. Statements of Dispute, Response Memoranda, extension requests, and other submissions must be served on the Claims Administrator in accordance with Rules 5 and 6.

/s/ Magistrate Judge David R. Strawbridge

Issue Date: Month Day, 2018



**ATTORNEY'S LIEN DISPUTE RESOLUTION PROCESS
HEARING SCHEDULE**

DISPUTE: Settlement Class Member v. Attorney Lienholder
CASE NO: XXXXXX

Based on the hearing request in the [Party's Name] Response Memorandum, on Month Day, 2018, it is ORDERED:

1. This Dispute will be decided after a [in-person OR telephonic OR video] hearing on Month Day, 2018, at 00:00 a.m./p.m. Eastern Time.
2. The hearing will be conducted at [Court's address and Courtroom No. OR by telephone conference at the following number: 1-xxx-xxx-xxxx, Participant Code: xxxxxxxx OR by video conference _____].
3. The hearing will be audio-recorded. The recording will be made available to the Parties to listen to or to transcribe at their own expense.
4. All Parties and their counsel, if any, must participate in the hearing. Failure to participate without prior approval from the Magistrate Judge will result in the Magistrate Judge issuing a decision based on the Record at the time of the hearing, together with any other evidence presented at the hearing.
5. If the Parties consent to the jurisdiction of the Magistrate Judge to issue a final decision, the Magistrate Judge's final decision will issue after consideration of the Record and any evidence properly submitted during the hearing. The Claims Administrator will serve copies of the final decision on the Parties.
6. If the Parties do not consent to the jurisdiction of the Magistrate Judge:
 - (a) The Magistrate Judge will issue a Report and Recommendation after consideration of the Record and any evidence properly submitted during the hearing. The Claims Administrator will serve the Report and Recommendation on the Parties.
 - (b) The Parties will have 14 days from the date the Claims Administrator serves the Report and Recommendation to file specific written objections with the District Judge. The Claims Administrator will serve copies of the written objections on the Parties. The Parties will have 14 days from the date the Claims Administrator serves any objections to file a written response to the opposing Party's objections. The Claims Administrator will serve copies of any responses to the objections on the Parties.
 - (c) The District Judge will enter a final decision after consideration of the Report and Recommendation from the Magistrate Judge and any objections from the Parties. The Claims Administrator will serve copies of the final decision on the Parties.
7. After any timely appeals are concluded, the Claims Administrator will disburse the withheld funds in accordance with the final decision and the provisions of the Settlement Agreement and Court orders regarding implementation.

8. No provision of this Schedule will be modified except upon written request for modification within 14 days of the date of this Schedule. Thereafter, this Schedule may be modified only upon a showing of good cause that the deadline cannot reasonably be met despite the diligence of the Party seeking modification.

/s/ Magistrate Judge David R. Strawbridge

Issue Date: Month Day, 2018

NFL**CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)**WITHDRAWAL OF ATTORNEY'S LIEN DISPUTE****I. SETTLEMENT CLASS MEMBER INFORMATION**

Name	First	M.I.	Last
Settlement Class Member Type			
Primary Counsel			
Address	Street		
	City	State	Zip
Email Address			

II. LIENHOLDER INFORMATION (#1)

Name	Full Name or Law Firm Name		
Address	Street		
	City	State	Zip
Email Address			

III. LIENHOLDER INFORMATION (#2) (IF APPLICABLE)

Name	Full Name or Law Firm Name		
Address	Street		
	City	State	Zip
Email Address			

IV. SUMMARY OF DISPUTE RESOLUTION

Agreed Amount to be Paid to Settlement Class Member	
Agreed Amount to be Paid to Attorney Lienholder #1	
Agreed Amount to be Paid to Attorney Lienholder #2	

Note: It is understood that the Claims Administrator will pay the Parties these amounts according to the provisions of the Settlement Agreement and Court orders regarding settlement interpretation.

V. HOW TO SERVE THIS REQUEST ON THE CLAIMS ADMINISTRATOR

By Email:	ClaimsAdministrator@NFLConcussionSettlement.com
By Mail:	NFL Concussion Settlement Claims Administrator P.O. Box 25369 Richmond, VA 23260 ATTN: NFL Liens
By Delivery:	NFL Concussion Settlement c/o BrownGreer PLC 250 Rocketts Way Richmond, VA 23231 ATTN: NFL Liens

VI. HOW TO CONTACT US WITH QUESTIONS OR FOR HELP

Settlement Class Member:

If you are represented by a lawyer, consult with your lawyer if you have questions or need assistance. If you are unrepresented and have any questions or need help, contact us at 1-855-887-3485 or send an email to ClaimsAdministrator@NFLConcussionSettlement.com. If you are a lawyer, call or email your designated Firm Contact for assistance. For more information about the Settlement Program, visit the official website at www.NFLConcussionSettlement.com to read the Frequently Asked Questions or download a copy of the complete Settlement Agreement.

Lienholder:

Contact us at 1-855-877-3485 or email ClaimsAdministrator@NFLConcussionSettlement.com. For more information about the Settlement Program, visit the official website at www.NFLConcussionSettlement.com to read the Frequently Asked Questions or download a copy of the complete Settlement Agreement.

VII. SIGNATURE

Both the Settlement Class Member or his or her attorney, if represented, and attorney lienholder(s) must submit a signed copy of this Withdrawal to the Claims Administrator. By signing this Withdrawal, each party certifies the following:

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information provided in this Withdrawal is true and accurate to the best of that Party's knowledge and that the submitting Party understands that false statements made in connection with this process may result in fines, sanctions, and/or other remedy available by law.

I certify that I have/will serve a copy of this signed Withdrawal on the Claims Administrator.

By submitting this Withdrawal, I consent to the payment of Settlement Payment funds according to the terms in Section III.

Signature		Date	
Printed Name	First	Middle Initial	Last
Law Firm			

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM
FOR APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

Undersigned Class Counsel The Locks Law Firm respectfully submits this Motion for the firm to be Appointed as Administrative Class Counsel to implement the Settlement Agreement in a manner consistent with their fiduciary duty to the plaintiff Class.

The grounds for this Motion, which are more fully set forth in the accompanying Memorandum, are as follows:

1. The Settlement Agreement is in danger of failing in its execution. As advertised, it was supposed to be a method to distribute tangible benefits to diagnosed players, a safety net against brain injury and its destructive effects on Class members and their families.

2. Sadly, the Settlement is failing to provide a fraction of what the NFL promised. Of nearly 1,100 dementia claims filed to date, only 6 have been paid as of this filing, yet the NFL's projections to this Court predicted 430 dementia claims paid twelve months into implementation. Claims paid for Alzheimer's Disease fall far short of projections.

3. More than half of all claims have been placed into audit or denied, thereby causing interminable delay and preventing payments.

4. The NFL seeks to rig the Settlement system. This is part of the League's DNA. Historically, it has always engaged in scorched-earth litigation, and that is what the League is doing here, making this a Settlement in name only.

5. One year into implementation, the NFL has turned the Settlement into a secret, privately litigated claim system that involves changing standards for claim packages, inconsistent and often improper standards of review, a black hole of audits, alleged deficiencies, anonymous opinions, denials, appeals, remands, technical squabbles over what a valid diagnosis might be, and the refusal by the NFL to agree to almost any interpretation of the Agreement that will streamline and make reasonable the claims process.

6. Notwithstanding the efforts of the Special Masters and BrownGreer, reflected in part by the recent FAQs, the NFL seeks to avoid its obligations by luring BrownGreer, the AAP, and the Special Masters into second-guessing and discrediting clinical judgments made by board certified neurologists and neuropsychologists who actually evaluate retired players face to face. The NFL wants to remove these expert clinical judgments and substitute (a) the NFL's own self-serving, biased, and inaccurate diagnostic interpretations pulled out of text books; and (b) the NFL's offensive accusations that a mere modicum of functionality shown by a player undercuts

or contradicts the diagnosis by board-certified specialists. The NFL's strategy will defeat valid claims, drive away physicians, lawyers and players, and circumvent the Court's program.

7. The undersigned Class Counsel have a fiduciary duty under Section 28.1 of the Agreement to the entire Class. In light of what has happened in the past 12 months, the undersigned seek an order from the Court appointing the Locks Law Firm as Administrative Class Counsel with the same rights and duties currently exercised by Seeger Weiss alone.

8. LLF is in a unique position. It represents approximately 1,100 registered players, has filed 102 claims, and obtained 35 awards to date. The firm knows the players, diagnostics, medical science, and Settlement process better than anyone else.

9. Based on its expertise, LLF is best positioned to defend and implement the Settlement as intended and in the best interests of the Class. The firm offers structural protection for the Class, because it understands from direct experience how every nuance of the NFL's scheme can harm, deny or set back valid individual claims of injured players.

10. LLF brings vital experience implementing many other similar settlements, including *In Re Diet Drugs*.

11. For those reasons, if the Settlement is to succeed, the Class will be best served by adding a structural protection within the administration.

12. The undersigned Class Counsel also seek a hearing on the Motion and Memorandum where it will provide evidence as the Court deems necessary.

WHEREFORE, the undersigned Class Counsel respectfully requests that the Court (a) appoint the undersigned as Administrative Class Counsel to represent the interests of the Class in

the implementation process; (b) set a hearing date for undersigned to present evidence in support of the Motion as the Court deems necessary.

Respectfully submitted,

/s/ Gene Locks

Gene Locks

David D. Langfitt

LOCKS LAW FIRM

The Curtis Center

Suite 720 East

601 Walnut Street

Philadelphia, PA 19106

Phone: (215) 893-3423

Fax: (215) 893-3444

Email: glocks@lockslaw.com

dlangfitt@lockslaw.com

CLASS COUNSEL

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MEMORANDUM IN SUPPORT OF
MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM
FOR APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

Undersigned Class Counsel the Locks Law Firm respectfully submits this Memorandum of Law in support of the Motion for Appointment of Administrative Class Counsel.

I. INTRODUCTION

1. The Settlement Agreement, once hailed as a revolutionary compromise and easy to implement, is in danger of failing in its execution. The Agreement was advertised as a method through which diagnosed Class members would receive tangible benefits, a safety net, so to

speak, against brain injury and its destructive effects on Class members and their families. Publicly available numbers and the direct experience of Class members establish that the Settlement is failing to provide a fraction of what the NFL promised. Of nearly 1,100 dementia¹ claims filed to date, only 6 have been paid as of this filing, yet the NFL's projections to this Court predicted 430 dementia claims paid twelve months into implementation. Claims paid for Alzheimer's Disease are better, but are far short of projections. More than half of all claims have been placed into audit or denied, thereby causing interminable delay and preventing payments.

2. The primary reason is that the NFL seeks to rig the Settlement system. At a March 2 symposium, NFL Counsel stated: "The league historically had engaged in scorched-earth litigation. They fought everything in every context, decade after decade after decade. I was advised by senior officials at the league that resolving a case consensually is not in ownerships' DNA."² Although NFL Counsel implied that the Settlement represented a change in League policy, implementation proves otherwise. The Settlement is going exactly as the NFL planned; it is a purported compensation system designed to evade payments to players in a myriad of ways, all to the benefit of the NFL.

3. One year into implementation, the NFL has turned the Settlement into a secret, privately litigated claim system that involves changing standards for claim packages, inconsistent and often improper standards of review, a black hole of audits, alleged deficiencies, anonymous opinions, denials, appeals, remands, technical squabbles over what a valid diagnosis might be,

¹ In 2013, the Parties agreed as a compromise that various gradations of dementia would be a surrogate diagnosis for Chronic Traumatic Encephalopathy (CTE), the signature disease of football and boxing, because dementia (or neurocognitive disorder) was clinically one symptom of CTE that could be measured using existing neurological and neuropsychological examinations.

² See <http://clsbluesky.la.columbia.edu/2018/03/08/video-inside-the-nfl-concussion-case/> at 25:00.

and the refusal by the NFL to agree to almost any interpretation of the Agreement that will streamline and make reasonable the claims process.

4. Notwithstanding the efforts of the Special Masters and BrownGreer, reflected in part by the recent FAQs, the NFL seeks to avoid its obligations. It seeks to lure BrownGreer, the AAP, and the Special Masters into second-guessing and discrediting clinical judgments made by board-certified neurologists and neuropsychologists who actually evaluate retired players face to face. The NFL wants to remove these expert clinical judgments and substitute (a) the NFL's own self-serving, biased, and inaccurate diagnostic interpretations pulled out of text books; and (b) the NFL's offensive accusations that a mere modicum of functionality shown by a player undercuts or contradicts the diagnosis by board-certified specialists. If not exposed and contained, the NFL's strategy will defeat valid claims, drive away physicians, lawyers, and players, and circumvent the Court's program.

5. The undersigned Class Counsel have a fiduciary duty to the entire Class under Section 28.1 of the Agreement to implement and administer the Settlement in the best interests of the Class and to make it work. In light of what has happened to the Settlement in the past 12 months, the undersigned seek an order from the Court appointing the Locks Law Firm ("LLF") as Administrative Class Counsel with the same rights and duties currently exercised by Seeger Weiss alone. The basis for this request is as follows:

- a. The undersigned have a fiduciary duty to the Class.
- b. LLF represents approximately 1,100 registered players, have filed approximately 102 claims, and have obtained 35 awards to date. The firm knows the players, diagnostics, medical science, and Settlement process better than anyone else.
- c. Based on its expertise, LLF is best positioned to defend and implement the Settlement as intended and in the best interests of the Class. The firm offers

structural protection for the Class, because it understands from direct experience how every nuance of the NFL's scheme can harm, deny or set back valid individual claims of injured players.

- d. LLF brings vital experience implementing many other similar settlements, including *In Re Diet Drugs*.

6. The Seeger Weiss go-it-alone strategy has not worked. The firm was capable of overseeing the Settlement through the approval and appeal process. Alone, it cannot address the current threats to implementation. It has registered only a few clients and filed almost no claims.³ In 2012, they represented fewer than 25 class members and now they represent fewer still. As a result, Seeger Weiss needs direct help day to day. It has not developed the expertise in the development and administration of individual claims to combat the NFL's scorched-earth strategy. The current state of threatened collapse of the claims process makes the structural problem clear.

7. For these reasons, if the Settlement is to succeed, the Class will be best served by adding a structural protection within the administration. The undersigned, as Administrative Class Counsel, would provide that protection based on their experience with nearly 1,100 registered players and implementing many other mass tort settlements, including *In Re: Diet Drugs*. The undersigned respectfully requests that the Court appoint LLF as Administrative Class Counsel to help protect the interests of the Class in the implementation process and set a hearing date on the Motion if the Court deems it necessary.

³ Seeger Weiss registered only a handful of players and filed only two claims, both within the last sixty days.

II. ARGUMENT

8. In public pronouncements, this Settlement was hailed as an historic and revolutionary compromise. Seeger Weiss, without any caution from the NFL, was led to believe that implementation procedures would be clear and simple. Players would not even need a lawyer.

9. As implemented, however, the Settlement has not provided the benefits it promised. The NFL forecasted to the Court payments of \$242.9 million during the first year of the claims process. Today, nearly twelve months later, only 6 dementia claims have been paid and only a total of \$156 million has been paid to players and their families.

10. The chart below compares by compensable injury the NFL's pre-settlement forecasted payments for the first twelve months of the Settlement with the actual results twelve months later.

Category (% projected incidence such category represents of the Whole , see ECF 6423-21, Ex. JJ, p. 5)	NFL Year 1 Forecasted Payments (see ECF 6168 Ex. F)	Actual Payments (eleven months later) (ECF 9571, Ex. A, p. 7)
ALS (.5 %)	17 Claims, \$42.7 million	18 Claims, \$48 million
CTE (1.3%)	51 Claims, \$50.24 million	49 Claims, \$53.8 million
Parkinson's (.4 %)	14 Claims, \$7.1 million	28 Claims, \$18.55 million
Alzheimer's (48%)	153 Claims, \$70.655 million	55 Claims, \$24.44 million
Level 2 (49%)	111 Claims, \$38.64 million	2 Claim, \$2.16 million
Level 1.5 (0% as all assumed within in Level 2)	319 Claims, 33.64 million	4 Claims, 2.68 million
Total Claims Paid	665 Claims	156
Total Amount Paid	\$242.9 million	\$149.63 million

11. Information from which the data is derived is publicly available on the Claims Administration website. Unpaid claims, many of which the undersigned filed at the first opportunity twelve months ago, have been subjected to a series of alleged deficiency notices, delays, and audits that have spanned eight to twelve months. On information and belief, nearly half of all claims filed by the Class have been placed in audit. Nearly twenty percent of all claims have been denied. The NFL has appealed at least ten percent of all claims.

12. Under these circumstances, it should surprise no one that the Class and its advocates have declared that the Settlement is failing the players. *See* Examples of emails and blog posts players and their advocates regularly circulate among the Class, attached as Exhibit A.

13. The examples of implementation failures set forth below prejudice the Class. They show that the NFL is implementing a scheme, claim by claim and player by player, to create a labyrinth of changing standards of review, secret procedures, audits, appeals and innumerable technical readings of the Agreement to delay and defeat claims and payments. The NFL has not settled this case. It seeks now to attack and remove the judgments neuroscience professionals use in diagnosing patients in a clinical setting and substitute its own biased approach using a lawyer-knows-better-than-a-doctor argument, references to medical text books, and anecdotal, out-of-context evidence about the player's occasional functionality.

14. In summary form, the primary implementation failures that prejudice the Class are:

- a. The NFL has tried to obfuscate the correct standard of review by the AAP of pre-effective date claims, and some AAP members do not follow the proper standard.
- b. The NFL is using its audit right as a second appeal weapon for the purpose of defeating approved claims via an anonymous and secret procedure.
- c. The NFL is engaged in vexatious, frivolous and bad faith appeals in violation of Settlement Section 9.6(b).

- d. The NFL (and some AAP members) have improperly introduced a causation requirement into the review process.
- e. Some APC and AAP members apply rigid BAP standards for the review of pre-effective date claims in violation of Settlement Section 6.4(b).
- f. BrownGreer has been forced to apply rigid BAP criteria to pre-effective date claims in violation of Settlement Section 6.4(b). This constitutes an unannounced amendment to the Agreement.
- g. The third party affidavit that is supposed to corroborate functional impairment in a player diagnosed with neurocognitive impairment (dementia) has also been the subject of an unannounced Amendment.
- h. Combined, the two surprise amendments have helped create a backlog of dementia cases that are subjected to baseless alleged deficiencies.
- i. The AAP is paid below market rates; it must double in size. Keeping it underpaid and small prejudices the Class and benefits the NFL with delay.
- j. The NFL has in bad faith prevented outstanding cognitive and behavioral neurologists from joining the AAP to the prejudice of the Class.
- k. The NFL argues rigid interpretations of the Agreement to delay and deny valid claims.
- l. The BAP as implemented is failing the players. On information and belief, a *de minimis* number of players have received awards through the BAP and most are rejected. Medical professionals have left the BAP or refused to be part of it.
- m. At this juncture, obtaining appointments for players takes three to six months.
- n. The BAP neuropsychological protocol is inherently biased against African American retired players, which makes it more difficult for approximately 70% of the Class to recover in the Settlement's compensation system.

A. The Standard of Review by the AAP

15. Section 6.4(b) of the Agreement is a provision to which the NFL agreed. It requires the AAP to review pre-effective date claims using a standard of review far less rigid

than BAP criteria. *See* Exhibit B.⁴ This was well-negotiated and recognizes that standard clinical practice prior to and outside of the BAP is different from the BAP. The NFL has aggressively contested it and sought to persuade the AAP, BrownGreer and the Special Masters that every pre-effective date claim must conform rigidly to BAP criteria.

16. Within its appeals, the NFL does not even acknowledge that section 6.4(b) exists. Rather, it seeks to hold a diagnosing physician to the BAP's rigid standard or a new standard contrived via text books and references found nowhere in the Agreement. This is one of many ways the NFL is trying to persuade BrownGreer, the AAP, and Special Masters that a valid clinical diagnosis must be doubted in ways no clinician can possibly anticipate, particularly clinicians who diagnosed players long before this system was devised.

17. The AAP members sometimes do not apply the correct standard of review. Some denials by the AAP show that members of the AAP have disregarded the 6.4(b) standard and are applying either strict BAP criteria or some other unwritten private textbook criteria.

18. Some AAP members have imposed rigid BAP criteria and openly contradicted the judgment of the examining neuropsychologist and neurologist regarding test validity. One AAP member denied a claim, in part, because the player allegedly did not show evidence of decline. Yet neuropsychological test results and a thorough assessment by a neurologist of the patient's functional impairment (corroborated by the patient's wife) proved otherwise. The case is currently on appeal and in audit. It illustrates that some AAP members produce results that are contrary to the records they have reviewed.

⁴ The Appeals Advisory Panel ("AAP") must review all pre-effective date claims "based on principles" that are "generally consistent" with BAP criteria. It also commands that a pre-effective date diagnosis need not adhere to the same diagnostic criteria as the BAP, which gives a pre-effective date diagnosis substantial leeway in meeting the AAP standard of review.

19. Sometimes, AAP decisions are divorced from reality. A recent denial by the AAP, currently on remand, suggests that the AAP member may not have read or understood the reports provided. The reviewing AAP member denied the claim, in part, because the Class member presented no evidence of impairment. Yet the evidence provided clearly met criteria for 1.5 neurocognitive disorder. In the appeal, the examining neuropsychologist (who has spent the majority of her career at the Hospital of the University of Pennsylvania and Children's Hospital) submitted a sworn affidavit that, in pertinent part, explained that the AAP member could not have understood her evaluation. It appears that the AAP member imposed rigid BAP criteria (or used his or her own private judgment) to conclude that the battery of neuropsychological tests, including the validity tests, were not "generally consistent" with the principles underlying the BAP. Clearly, though, they were.

20. The denial provided an additional cause for concern. The denial was based in part on the grounds that the examining specialists did not investigate the "psychopathology" (mental illness) of the player. The examining neuropsychologist, however, did acknowledge the condition and adjusted the test process in response. But, more significantly, the denial shows a bias and lack of understanding. Psychiatric symptoms are associated with mild traumatic brain injury; this is common knowledge. And the fact of mental illness, whether or not it is a contributing factor to neurocognitive decline, can never form a basis to deny a claim in this Settlement.

21. This is one example of an AAP member improperly using speculation about a contributing cause (mental illness) to reject a claim. It begs the question whether the AAP member understands Section 6.4(b), but also whether the NFL's efforts to confuse the AAP have

been successful. This and other examples are available for the Court's review either *in camera* or in redacted form.

22. The example also shows that Class Counsel must track decisions by AAP members to determine whether members show bias against the Class or confusion regarding the standard of review for pre-effective date claims. Without access to any AAP decision other than those the undersigned must address directly, the undersigned cannot track the decisions and, if necessary, take action. An appointment as Administrative Class Counsel will permit the undersigned to perform this evaluation on an ongoing basis.

B. The NFL's Misuse of the Audit Process.

23. On information and belief, more than half of all claims have been placed in audit or been denied outright. Of the claims that have received awards, the NFL has appealed 35.

24. One case, in particular, shows that the NFL seeks to modify the Settlement into a secret process via audits to defeat approved claims. In this case, a 41 year old player had a decade-long history of neurodegenerative decline, including multiple positive neuropsychological tests (including one from a neuropsychologist employed by the New York Giants). An MAF neurologist evaluated the player and diagnosed him with early onset Alzheimer's Disease based on those test results, a 12/30 score on the Mini-Mental Status Exam and a positive amyloid PET brain scan.⁵ The NFL then appealed and lost in November. The claim remains unpaid.

⁵ Amyloid PET scans allow for accurate detection of amyloid plaques, a hallmark of Alzheimer's Disease in living people. The player also had a positive PET - FDG scan and an MRI that showed brain damage (axonal shearing).

25. On the last day before the award was to be accepted for check-writing, the NFL demanded an audit. Its basis was a three minute videotape of the player speaking publicly four years earlier. The NFL alleged that the three-minute video was anecdotal evidence of something improper. Notwithstanding overwhelming objective evidence to support the diagnosis, the NFL accused the MAF physician, multiple neuropsychologists, the PET scanning service, the radiologist, the player, and the player's family of fraud.⁶ Clearly, the NFL is scouring the internet and social media sites to find isolated out-of-context moments of lucid behavior by a player (in this case, four years earlier) to drum up doubt about a sound MAF diagnosis approved by BrownGreer and the Special Masters.

26. Even more disturbing, the NFL is now demanding that BrownGreer seek a differing medical opinion from the AAP as part of the audit process for the purpose of gutting the approved diagnosis and claim. If it succeeds, the NFL will have morphed the Agreement into an opportunity for the NFL to shop for an anonymous medical opinion via the audit process to defeat a well-supported and approved claim.

27. The implications are enormous. The NFL is placing the Settlement at risk of becoming an NFL-controlled opportunity to defeat a diagnosis through the audit process. The NFL wants this done out of the public view and with anonymous physicians who have never seen or evaluated the player. This is a misuse of the audit procedures, contrary to the purpose of the AAP, and contrary to the purpose of the Settlement Agreement. On information and belief, it's part of an NFL scheme to circumvent the Court's decision to uncap the Settlement.

⁶ Attached as Exhibit C are an email and letter to the Claims Administrator (without using identifying information about the claimant) that addresses this case and the misuse by the NFL of its audit right.

C. The Latest Skirmish

28. Yesterday, co-lead counsel Anapol Weiss filed a Motion to Intervene (document no. 9784) for a hearing on the incessant and unfair delays in the processing of dementia and Alzheimer's claims generally, but specifically the claim of their client Wayne Radloff.

29. Twenty-four hours after Anapol Weiss filed its Motion, Mr. Radloff received a Notice of Monetary Award. It is distressing that, as this case suggests, a player must file a Motion to obtain an award.

30. It also reflects the larger problem. Like Mr. Radloff's claim, more than a thousand claims sit in some undetermined administrative limbo, audit or appeal. The litany of administrative tangles, delay and constant questioning described in the Anapol Weiss Motion is what nearly every player faces. It is not what was promised and advertised to persuade players and their counsel to become part of the Settlement Class.

31. Moreover, Mr. Radloff has not been paid. The NFL has thirty days to appeal, which could delay payment for months. Even if the NFL loses on appeal, it may invoke its audit rights improperly and take another chance at defeating Mr. Radloff's claim in a secret procedure with an anonymous opinion from a physician who never examined Mr. Radloff at all.

32. During this entire time period, Mr. Radloff's claim has lost value. No interest is accumulated or paid. Arguably, the delay to date has cost Mr. Radloff nearly \$100,000.

D. The NFL's Vexatious Appeals

33. As with its audit right, the NFL seeks to stop and deny valid claims via appeal. The NFL has appealed 35 claims largely on frivolous grounds, often arguing, for example, that Alzheimer's Disease cannot occur in younger men, because it is so rare in people under 65 years old in the general population. This reflects the NFL's bad faith approach. Head injury is a well-

known risk factor for Alzheimer's. The NFL has admitted in papers that the dementia associated with Alzheimer's (major neurocognitive disorder) is 200 times more likely in this population than the general population. *See* Exhibit D attached. Yet the NFL argues that awards granted to players (both Alzheimer's and dementia awards) should be reversed on the grounds that some small functionality by the retired player is evidence that he does not qualify.

34. The NFL's approach shows three things: (a) the League will argue virtually anything to evade payments; (b) it seeks to substitute via an appeal its lawyer's opinion for the diagnosis of a board-certified neurologist who actually examined the player in a clinical setting; and (c) it refuses to accept that some functionality by the patient at any given moment in time does not negate the clinical evidence and judgment of the diagnosing specialists.

35. The NFL has often argued that depression or sleep disorder explains the retired players' decline, even though these conditions are common symptoms of brain injury. On that basis, the NFL has argued that the diagnoses of board-certified clinical specialists in Parkinson's Disease and Alzheimer's Disease must be wrong or incomplete.

36. The NFL has appealed awards on the frivolous grounds that the diagnosing physician did not sufficiently rule out other hypothetical causes. The NFL has speculated on appeal that clinically diagnosed Alzheimer's Disease might be caused by something else (depression or sleep disorder, which are symptoms of brain injury) and, therefore, the hypothetical causes must be ruled out via extensive testing before an award can be granted.

37. This is contrary to a foundation of the Agreement, which states that the player need not prove that football caused the injuries or exclude the possibility that other risk factors are linked to a qualifying diagnosis. *See* FAQ 15 appended to the Agreement, attached here as Exhibit E ("You also do not need to exclude the possibility that the Qualifying Diagnosis was

caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.") (Emphasis added.)

E. The NFL's Bad Faith Interpretations of the Agreement

38. By way of example only, the NFL took the position from the outset of implementation, that under section 8.2 (a) (iii) of the Agreement (attached as Exhibit F) a physician who diagnosed a player in the past must sign the Court-required Diagnosing Physician Form ("DPC") unless the physician was dead or adjudicated incompetent by the court.

39. In June 2017, the undersigned brought to the NFL's attention two easy cases of players who had been on the NFL's 88 Plan (for brain injury) for many years. The players had been diagnosed at a major university in Houston with moderate dementia in 2013 and 2014 respectively, but the physicians no longer practiced at the university and were not inclined to respond or sign a DPC, because the players were no longer their patients. One physician had moved away to Switzerland and could not be contacted except on Facebook messenger.

40. All of this the undersigned explained via letters in response to deficiency notices from BrownGreer. The undersigned argued that the claims had obvious indicia of reliability, and the Parties should read section 8.2 expansively for the players. The NFL refused. Months passed before the NFL responded with a compromise and demanded new and expensive re-testing of each player via the MAF program. Instead of relying on the 88 Plan's acceptance of the players and a major university's neurological evaluations, the NFL chose to impose additional requirements, more costs, and more delay for retired players in their late fifties who are unemployable, depressed, brain damaged, and intermittently homeless but for the grace of family members.

41. The NFL has refused to permit its own physicians in the disability benefits plans to sign a Diagnosing Physician Certification required by the Settlement. Many players have been diagnosed with dementia and other diseases by NFL-hired neurologists and received full disability benefits based on the diagnoses. Yet the NFL will not permit its own neurologists to sign the Diagnosing Physician Certification so the player can recover under the Settlement. Rather, the player must submit to re-testing via the BAP or MAF programs and acquire a different physician to sign a DPC.

42. There is no reason for this, and the consequences to the players are enormous. It prejudices the player and his family by delay; it also places the player at risk of dying before re-testing and making him and/or his family ineligible for benefits. It also creates an unnecessary and unreasonable burden on families and players, many of whom struggle with simple day to day existence, are in chronic pain, and vulnerable.

F. The Surprise Amendments

43. The NFL's scheme started in the first month of implementation. BrownGreer was instructed to apply BAP Criteria to all Pre-effective Date Claims, even though the standard of review is 6.4(b). *See* Exhibit B. This was an Amendment without notice to the Court, the Class, attorneys for Class members, and the undersigned; it serves the NFL's scheme to change review standards and prejudice the Class. No one who prepared a pre-effective date claim in 2015 and 2016 knew this would happen. It has created an endless backlog of purported deficiencies, delays and arguments. Had the undersigned been involved, the Amendment would not have happened.

44. In response, the undersigned have argued against the Amendment in nearly all of their pre-effective date dementia claims, most of which were filed in spring and summer of 2017

and remain unresolved and pending. All are of record with BrownGreer and can be produced *in camera* or at a hearing.

45. BrownGreer was also required to impose a second Amendment. It was required to find deficient any pre-effective date dementia claim if a third-party affidavit used to corroborate the functional impairment of a player was dated after the date of diagnosis. This purported deficiency was applied to nearly every pre-effective date claim and created incessant delays and denials for more than 1,000 players.

46. The Agreement, however, does not place any date restriction on the corroborating affidavit. *See* the Settlement Agreement's injury definitions for neurocognitive impairment, attached as Exhibit G. This is the only text within the Settlement that requires a third party corroborating affidavit for the functional impairment of a claimant. Nowhere in the text (explicit or implied) is there a date restriction. Also, section 6.4(b) does not require strict adherence to the BAP for pre-effective date claims; therefore, a corroborating affidavit is not strictly necessary for a pre-effective date claim, and striking one based on its date is contrary to both the BAP injury definitions and section 6.4(b).

47. Obviously, the Amendment exclusively benefits the NFL (via delay and denial of claims) and prejudices the Class by compromising pre-effective date claims based on the whim of the NFL. Not one lawyer or player who submitted a pre-effective date claim had any notice or an opportunity to be heard on this critical modification to the Agreement. The undersigned Class Counsel never knew of the Amendment in advance. We responded case by case (in possibly 70 pre-effective date claims) and laid out our arguments regarding why this second Amendment had no foundation.

50. We brought the two surprise Amendments and other problems to the attention to BrownGreer via a memorandum (attached as Exhibit I) dated November 6, 2017 and suggested solutions to every problem that, to our limited knowledge at that time, afflicted the claims process.

JA8623

obvious – that players suffer from many symptoms of neurodegenerative disease, including the well-recognized symptoms of CTE.

57. In January 2017 the undersigned Class Counsel proposed as an AAP member the current Chair of the Cognitive and Behavioral Neurology Department at Harvard University, a medical professional familiar with several members of the Class as patients, two of whom have received monetary awards. His rates are higher than those set for the AAP. He declined participation on the AAP based on the fact that the Parties insisted that he take a pay cut. The undersigned requested an exception to the rates, but the request was refused. Sacrificing the candidate's expertise on the basis of an hourly rate prejudices the Class. He is a thought leader on diagnostic issues critical to the Class and is an outstanding clinician.

58. The NFL should not be heard to object to proposed AAP neurologists who are familiar with symptomatic retired players. Familiarity with Class members should weigh in favor of participation on the AAP, not against it. Cognitive and behavioral neurologists who are familiar with the neurological conditions of Class members have the best clinical expertise available and are a benefit to this process.

59. As recently as October 2017 and January 2018, the undersigned Class Counsel nominated two outstanding cognitive and behavioral neurologists to the AAP. Both have extraordinary credentials. One is a Professor of Neurology and the Director of Clinical Traumatic Brain Injury Research at the Hospital of the University of Pennsylvania, less than thirty blocks from the Courthouse. He is a thought leader in this subject matter. The other, a cognitive and behavioral clinical neurologist at Emory University, trained at Mayo Clinic and Penn. He too is a thought leader on the subject matter addressed by the AAP. Both are outstanding clinicians. The NFL objected on the grounds that the physicians had had limited

contact with the undersigned Class Counsel. This is a bad faith objection and smacks of the NFL's effort to keep off of the AAP neurologists with the right clinical expertise.

H. The Need for Structural Protection.

60. The Settlement is at a crossroads. The foregoing facts and circumstances, all of which can and will be supported by evidence at a hearing if the Court requires, show that the NFL is in full litigation mode against the Class. By appointing LLF as Administrative Class Counsel the Court will provide the Class with a structural protection against the NFL's approach in day to day implementation decisions and negotiations as follows:

(a) Class Counsel (not just one co-lead counsel) will be aware of and directly involved in implementation decisions, which has not been true to date.

(b) The undersigned represents nearly 1,100 players via contracts, have filed more than 100 claims and received 35 awards to date, some of which are on appeal by the NFL. They have an ongoing incentive to those players and the Class generally to have claims successfully resolved expeditiously and fairly.

(c) The undersigned have developed over the past five years a reservoir of knowledge regarding how cognitive and behavioral neurologists address and evaluate symptomatic players (i) under principles generally consistent with BAP criteria and (ii) under rigid BAP criteria.

(d) They know first-hand the obstructionist tactics of the NFL directed at their clients and the adverse effect those tactics have on players and families.

(e) They know the network of outstanding cognitive and behavioral neurologists nationwide both within the MAF/BAP network and yet to be nominated to the MAF/BAP network. Those physicians are the experts who should be directly involved in the

AAP. They should be in a position to advise the Court and Special Masters regarding the proper implementation of the diagnostic standards. They also understand the neuroscience underlying neurodegenerative disease caused by repetitive head trauma. This expertise will help the Court, the Special Masters, and the Class.

(f) Seeger Weiss cannot satisfy these duties alone. It does not have the resources, the expertise, or the day to day incentives to engage in aggressive advocacy on behalf of players.

58. For these reasons, the undersigned seeks to work with Seeger Weiss to make the Settlement successful for the Class and to combat the current obstructionist tactics of the NFL.

III. CONCLUSION

For all of the forgoing reasons, undersigned Class Counsel the Locks Law Firm respectfully requests that the Court grant the Motion and enter the proposed Order appointing the Locks Law Firm as Administrative Class Counsel with all the rights and duties of co-lead counsel Seeger Weiss.

Respectfully submitted,

/s/ Gene Locks _____

Gene Locks

David D. Langfitt

LOCKS LAW FIRM

The Curtis Center

Suite 720 East

601 Walnut Street

Philadelphia, PA 19106

Phone: (215) 893-3423

Fax: (215) 893-3444

Email: glocks@lockslaw.com

dlangfitt@lockslaw.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINDER OF POPE MCGLAMRY IN MOTION BY
THE LOCKS LAW FIRM FOR APPOINTMENT OF
ADMINISTRATIVE CLASS COUNSEL AND FOR A HEARING**

The Locks Law Firm filed a Motion on March 20, 2018 (Doc. 9786) seeking various relief including a hearing on failures with respect to Claims Processing. Pope McGlamry, Kilpatrick, Morrison & Norwood, P.C. ("Pope McGlamry"), an original member of the Court-appointed Plaintiffs' Steering Committee, joins in

the request on behalf of its clients for an appointment of administrative class counsel and for a hearing to correct failures in Settlement implementation.

Pope McGlamry was one of the firms that originated this litigation. We represent more than 400 registered players. We have filed 30 pre-effective date claims. The implementation of the Settlement shows that the terms of the Settlement Agreement are not being applied properly and are often applied in a way that prejudices the Class and benefits the NFL. We concur with the list set forth in the filed Memorandum of the Locks Law Firm (Doc. 9786) at pages 6-7.

In addition, on information and belief, there may be other amendments and rules created by the NFL and others of which the Class is not aware and for which the Class never received notice. Any new amendment or rule that may adversely affect player claims, particularly in the context of pre-effective date claims subject to the less stringent review standard of Section 6.4(b), should be subject to the review and consideration of all Class Counsel who actually represent retired players and have submitted pre-effective date claims on their behalf. Such new rules also should be reviewed by the Court as well, possibly in the context of an hearing, to determine whether the new amendment or rule prejudices player/claimants and benefits the NFL.

Pope McGlamry respectfully requests that the Court appoint Administrative Class Counsel and hold a hearing on implementation failures to correct, among other things, failures identified in the Locks Law Firm Memorandum.

Dated: March 26, 2018.

Respectfully submitted,

POPE, McGLAMRY, KILPATRICK,
MORRISON & NORWOOD, P.C.

/s/ Michael L. McGlamry
Michael L. McGlamry
Georgia Bar No. 492515
3391 Peachtree Road, NE, Suite 300
P.O. Box 191625 (31119-1625)
Atlanta, GA 30326
Ph: (404) 523-7706
Fax: (404) 524-1648
efile@pmkm.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all counsel of record by the Court's ECF system.

Dated: March 26, 2018

POPE, McGLAMRY, KILPATRICK,
MORRISON & NORWOOD, P.C.

/s/Michael L. McGlamry
Michael L. McGlamry
Georgia Bar No. 492515

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB
MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**JOINDER IN REQUEST FOR A HEARING TO CORRECT FUNDAMENTAL
IMPLEMENTATION FAILURES IN CLAIMS PROCESSING**

The Locks Law Firm filed a motion on March 20, 2018 (Doc. 9786) (the "Locks Motion") seeking various relief including a Hearing on several failures in Claims Processing.

Hausfeld on behalf of its Pre-Effective Date Diagnosis clients joins in the request for a hearing to inform the Court of the failures, so they can be corrected. Hausfeld has filed Section 6.4(b) Pre-Effective Diagnosis Date claims for 41 retired players. Our experience in the Claims Process shows that the terms of the Settlement Agreement are not being faithfully applied, similar to that described in the Locks Memo at pages 6-7 (a-n) (identifying 14 failures). In

addition to the 14 failures identified in the Locks Memo, the Claims Administrator has also made up a “new rule,” for Pre-Effective Diagnosis Date claims that:

A board certified neurologist who examines and evaluates a retired player, and reviews his records, may *not* rely on the medical record of another doctor (i.e., an internist) to establish a date of diagnosis prior to the board certified neurologist’s first visit with the retired player.

This “new rule” is not part of the Settlement Agreement. Specifically it is not written down in §6.3 (Qualifying Diagnoses) nor in Exhibit 1 (Injury Definitions). Like the other “new rules” that the Claims Administrator has set up (*see* Doc. 9786 at 15-17), no class member *ever received notice of this rule prior to approval of the Settlement by this Court*. The deleterious effect of this rule is that many retired players who can prove a Qualifying Diagnosis and are entitled to an Award, will receive an Award for *hundreds of thousands of dollars less* than would be the case if prior medical records could be relied upon by the diagnosing physicians to set the date of diagnosis. This is particularly problematic for the older retired players filing pre-effective date diagnosis claims because they were never on notice that their earlier medical records (for example from 2000-2010) could not be relied on to establish a diagnosis date; and because due to their older age, their awards are already severely discounted.

We respectfully request that the Court hold a hearing to address these fundamental implementation failures in Claims Administration, and correct these failures on a retroactive basis.

DATED: March 26, 2018

Respectfully submitted,

/s/ Richard S. Lewis

Richard S. Lewis
Jeannine M. Kenney
HAUSFELD LLP
1700 K Street, N.W., Ste. 650
Washington, DC 20006
Phone: (202) 540-7200
Fax: (202) 540-7201
rlewis@hausfeld.com
jkenney@hausfeld.com

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE)	
PLAYERS' CONCUSSION INJURY)	No. 2:12-md-02323-AB
LITIGATION)	MDL No. 2323
)	
Kevin Turner and Shawn Wooden,)	
<i>On behalf of themselves and others similarly</i>)	Hon. Anita B. Brody
<i>situated,</i>)	
)	Civ. Action No. 14-00029-AB
Plaintiffs,)	
)	
v.)	
)	
National Football League and)	
NFL Properties, LLC,)	
Successor-in-interest to)	
NFL Properties, Inc.,)	
)	
Defendants.)	
)	
THIS DOCUMENT RELATES TO:)	
<u>ALL ACTIONS</u>)	

JOINDER OF PROVOST UMPHREY LAW FIRM, L.L.P.
IN MOTION BY THE LOCKS LAW FIRM FOR
APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL

On March 20, 2018, The Locks Law Firm filed a Motion seeking the appointment of administrative class counsel (Doc. 9786). Provost Umphrey Law Firm, L.L.P. joins in The Locks Law Firm's motion.

Provost Umphrey has over 20 pre-effective date claims. In order to ensure the Settlement Agreement is appropriately implemented and interpreted the appointment of administrative class counsel is necessary at this time. Given the volume of players of represented, Locks Law Firm is best situated to serve as administrative class counsel. Further, Provost Umphrey, as well as others,

anticipate handling NFL claims for years into the future. The class will be best served having an administrative counsel actively dealing with pending claims now and in the future.

WHEREFORE, Provost Umphrey respectfully requests that the Court appoint The Locks Law Firm as Administrative Class Counsel.

Dated: March 27, 2018

Respectfully submitted,

PROVOST ☆ UMPHREY
LAW FIRM, L.L.P.
Attorney at Law
Post Office Box 4905
Beaumont, Texas 77704
(409) 835-6000
(409) 813-8652 - Fax Number

_____/s_____
MATTHEW C. MATHENY
STATE BAR NUMBER: 24039040
JACQUELINE RYALL
STATE BAR NUMBER: 17469445
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2018, I caused the foregoing Joinder of Provost Umphrey Law Firm, L.L.P. In Motion by The Locks Law Firm For Appointment of Administrative Class Counsel to be served via the Electronic Case Filing (ECF) system in the United States District of Pennsylvania, on all parties registered for CM/ECF in the above captioned matter.

_____/s_____
By: _____

MATTHEW C. MATHENY

JA8637

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323
Case No. 12-md-2323 (AB)

Kevin Turner and Shawn Wooden,
*on behalf of themselves and others
similarly situated,*

Civil Action No. 14-cv-00029-AB

Plaintiffs,

VS.

National Football League and NFL
Properties LLC, successor-in-interest
to NFL Properties, Inc.

Defendants.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**JOINER IN REQUEST FOR ACTION TO CORRECT IMPLEMENTATION
FAILURES IN THE CLAIMS AND BAP ADMINISTRATION**

Zimmerman Reed joins the recent motions calling for action to correct fundamental implementation failures in the Settlement administration, and proposes the Court appoint an Administrative Committee to promptly and efficiently address complications arising in the Claims and BAP Administrations. In the alternative,

Zimmerman Reed requests a hearing to inform the Court of its concerns with the Settlement Administration as outlined below.

INTRODUCTION

1. The recent Motions of Class Counsel the Locks Law Firm and of Co-Lead Class Counsel Anapol Weiss join a chorus of media reports highlighting the issues with the Monetary Award Claims review process. *See* Mot. of Class Counsel the Locks Law Firm For Appointment of Admin. Counsel, Mar. 20, 2018, ECF 9786; Mot. of Co-Lead Counsel Anapol Weiss for a Hearing to Seek Court Intervention on the Processing of Certain Claims, Mar. 19, 2018, ECF 9784. The media reports and recent motions discuss the growing barriers in and the lack of transparency with the Claims Administration process. These barriers have caused unnecessary and inappropriate delays in the review of Class Members' claims and have created distrust between Class Members and the Claims review process.

2. While the media's attention has focused on problems in the Claims Administration, the BAP Administration has fared no better. Nearly a year into the BAP, many of Zimmerman Reed's clients' requests for screening have gone unanswered, and their neuropsychometric exams and neurological consultations remain unscheduled. Those who completed their exams and consultations have waited up to six months to receive their reports from the BAP Administrator. Numerous administrative blunders have led to cancelled appointments, appointments scheduled during times when BAP clinics were closed, players sent home because of scheduling miscommunications, and demands from clinics for payments from Class Members. Some of Zimmerman Reed's

clients have lost money on travel and hotels because the BAP Administrator provided late notice, and sometimes, no notice, of cancellations.

3. At this juncture, it is of the utmost importance to restore the Class's faith in the Settlement by providing transparency to the Claims and BAP Administration and improving the efficiency of the Claims review and BAP scheduling processes. Zimmerman Reed proposes the Court establish an Administrative Committee to operate within the oversight framework already established in the Settlement. The Committee would have 30 days to work in collaboration with the Claims Administrator, the BAP Administrator, and the Special Master to review the causes of administrative delay and recommend immediate measures to the Court to improve the Settlement's administration. Alternatively, Zimmerman Reed requests a hearing to inform the Court of its growing concerns with the Claims and BAP Administration.

BACKGROUND

A. Concerns with the Claim Administration

4. Locks Law Firm and Anapol Weiss have sufficiently described the significant administrative burdens in the Claims review process. Zimmerman Reed adds only two points.

5. First, Locks Law Firm’s Motion correctly points to interpretations of the Settlement that effectively create new and additional requirements absent from the Settlement itself. One additional example is FAQ 88, which states: “The diagnosing physician who signs a Diagnosing Physician Certification Form for a diagnosis made on

a living Retired NFL Football Player must have examined that Player in person.” Settlement FAQs, at 28-29 (Mar. 22, 2018).¹

6. The validity of this provision aside, it is not a requirement listed in the Settlement, which Class Members relied on in preparing their Pre-Effective Date Claims. The effect of implementing new requirements is significant. For example, a highly qualified, board-certified neurosurgeon with over forty years of experience assessed whether Zimmerman Reed’s clients were likely suffering from a Qualifying Diagnosis. Although this neurosurgeon based his diagnoses on his full review of Players’ medical records (which overwhelmingly supported his diagnoses), helped coordinate neuropsychometric testing for Players, and frequently communicated with Players by phone, every one of his diagnoses was issued a deficiency because he did not meet with Players “in person.” While each client had an alternative signatory for the Diagnosing Physician forms, the Administrator’s new requirement significantly delayed their claims. Had Class Members been notified of these new and previously unknown requirements, their claims would have progressed far more quickly. However, no one knew of these new requirements until they were issued a deficiency by the Claims Administrator.

7. Second, the regular appellate process has not produced the type of guidance that is necessary a year into the Settlement’s administration. On November 3, 2017, the Court directed movants experiencing issues in the Claims administration to “proceed through the Claims Administration process, and if the claims are denied . . . follow the proper appeals process.” Order, Nov. 3, 2017, ECF 8882; Mot. to Determine Proper

¹ Available at <https://www.nflconcussionsettlement.com/Un-Secure/FAQ.aspx>

Admin. of Claims Under the Settlement Agreement, Aug. 15, 2017, ECF 8267. While this process has occurred, the Special Master has sometimes chosen not to issue rulings that would provide necessary guidance.

8. For example, the NFL appealed a Notice of Monetary Award issued for one Zimmerman Reed client and relied on medical records from a separate Players' claim. Co-Lead Class Counsel, Chris Seeger, challenged the NFL's use of other Players' medical records in an appeal arguing: (1) the NFL would gain an improper advantage over Class Members because it could "data-mine" Players' medical records, to which individual class members do not have access; and, (2) the NFL violated the Settlement Agreement's confidentiality order. The Special Master denied the appeal without providing guidance on that important issue.

9. The same issue is occurring with the Settlement's good-faith requirements. The Settlement agreement allows appeals of Monetary Awards and audits of Claims only when made in good faith. *See* Am. Class Action Settlement ("Settlement") §§ 9.5, 9.6(b), 10.3(a), ECF No. 6481-1. Co-Lead Class Counsel can, and has, sought petitions for appropriate relief where the NFL Parties submitted vexatious, frivolous or bad faith appeals. To Zimmerman Reed's knowledge, the Special Master has not yet granted any such relief. Utilizing the good faith requirements would assure Class Members that the NFL is not abusing these provisions to cause delay and unnecessary doubt in legitimate Claims.

B. Concerns with the BAP Administration

10. Although the administrative complaints concerning the Settlement Agreement are focused on the Claims Administration, the BAP Administration has fared no better.

11. Currently, 12,685 registered Class Members are eligible for the BAP, indicating that BAP will have a more significant and immediate effect than Claims on the majority of the Class. Almost a year into the BAP, however, the BAP Administrator has struggled to timely schedule Class Members for BAP appointments and to provide reports after Class Members complete their appointments.

12. Under the BAP, each eligible Class Member is entitled to two appointments: a neuropsychometric exam and a neurological appointment. With 12,685 BAP-eligible Class Members, the BAP Administrator may have to schedule as many as 25,370 appointments. At this time, however, only 5,449 appointments have been scheduled and only 3,851 appointments have been attended. As such, the Administrator has scheduled only about 20% of the total BAP appointments. Most of the remaining appointments will need to be scheduled by June 6, 2019, the two year deadline that exists for the majority of the Class.

13. Some Zimmerman Reed clients have waited months to obtain dates and locations for their exams and consultations. Despite requesting to be scheduled last summer, many still have neither of their appointments scheduled. Likewise, many who completed their neuropsychometric examinations have gone months without receiving a follow up neurological consultation. This is particularly problematic because the BAP

Administrator will not disclose the results from a neuropsychometric exam prior to completion of a neurological consultation. That means Class Members whose neuropsychometric testing reveals a Qualifying Diagnosis or other complication ***may not know of their condition for several months***. Class Members may endure significant time without knowing of or treating their cognitive diseases.

14. The Administrator's delay also has consequences for the Monetary Awards of Players diagnosed with a Qualifying Diagnosis through the BAP. Aging a single year decreases a Level 2.0 Neurocognitive Impairment award by an average of \$81,944 and a Level 1.5 Neurocognitive Impairment award by an average of \$40,972, assuming no deductions. Ensuring players are tested as quickly as possible maximizes Players' deserved Monetary Awards.

15. Even when the BAP Administrator schedules appointments, often times they do so unsuccessfully. Many Zimmerman Reed clients have appeared for their scheduled appointments only to be turned away because the appointment was cancelled, never scheduled, or the clinic was closed. As examples:

- a. On September 29, 2017, one Class Member arrived for his scheduled neurological consultation in New York. To make the appointment, the Class Member stayed an additional night in New York instead of traveling home to Florida where his house was potentially impacted by Hurricane Irma. When the Class Member arrived for the appointment, he was told it was cancelled. The BAP Administrator failed to inform him or Zimmerman Reed of the cancellation.
- b. The Administrator scheduled a Class Member for a neurological consultation on January 19, 2018. On January 8, 2018, the Administrator sent a notice requesting confirmation of another neurological consultation on January 27, 2018. Zimmerman Reed informed the Administrator that the Class Member was already scheduled, and then the Administrator

proceeded to cancel the already-confirmed January 19 appointment. Zimmerman Reed noted that January 27 was a Saturday, but the Administrator stated January 27 was the correct date. Zimmerman Reed confirmed the availability of the Class Member, and the Class Member made travel arrangements, including booking a hotel. On January 19, 2018, the Administrator cancelled the January 27 appointment, providing no explanation for the cancellation. Zimmerman Reed informed the Class Member who could not receive a return on his advance payment for a hotel.

- c. Another client was scheduled for a neuropsychometric exam on December 2, 2017. When the client arrived, the clinic was closed. Zimmerman Reed contacted the clinic, and was told the clinic was not open on Saturdays and that the clinic informed the BAP Administrator as such. The BAP Administrator did not inform the Class Member or Zimmerman Reed. The Administrator rescheduled the Class Member for a neurological consultation on January 16, 2018, which Zimmerman Reed confirmed was in error because neuropsychometric testing must precede the neurological consultation. As such, the appointment was cancelled. Although Zimmerman Reed cancelled the appointment immediately and never shared the appointment details with the Class Member, the BAP Administrator did not inform the clinic of the cancellation. The clinic sent a notice to the Class Member with details of the consultation. The Class Member incurred travel and hotel expenses in preparation for the appointment, and when he arrived, he was turned away because he had not completed a neuropsychometric exam. This Class Member has still not completed his neuropsychometric exam or neurological consultation.
- d. On December 19, 2017, a Class Member showed up for a neurological consultation but was turned away because the appointment had been cancelled. The BAP Administrator failed to inform both the Class Member and Zimmerman Reed that the appointment was cancelled.
- e. On December 16, 2017, a Class Member arrived for neuropsychometric testing as scheduled by the BAP Administrator and when the Class Member arrived, the clinic was closed. He has still not been rescheduled.

16. Additionally, the Administrator has failed to provide timely reports for Class Members who completed their BAP visits. Currently, 67 Zimmerman Reed clients completed their neuropsychometric exam and neurological testing, yet only 17 received

their reports. Some of these Class Members without reports completed their appointments nearly five months ago.

17. The delay in providing reports is unacceptable. Class Members who meet the Qualifying Diagnosis criteria should begin immediate treatment; but, many are waiting for months, up to half a year, to even discover they are suffering from a neurocognitive disease.

18. Finally, the BAP Administrator is tasked with creating a nationwide network of vendors and clinics, allowing Class Members to proceed through the BAP as conveniently as possible. Because of the significance of the BAP, convenient testing locations and schedules are necessary to ensure Class Members participate to the fullest extent. However, the BAP Administrator is scheduling Class Members at locations requiring hundreds of miles of travel for their neuropsychometric examinations and then again for their neurological consultations. That type of burden will discourage Class Members from participating in this important program.

THE ADMINISTRATIVE COMMITTEE

19. To resolve the administrative issues facing both the Claims Administration and BAP Administration processes, Zimmerman Reed proposes establishing an Administrative Committee (“Committee”) to work under the direction of the Special Master and within the Settlement’s already-established oversight framework. The Committee will be tasked with recommending immediate procedural changes to the Court to improve the efficiency and transparency of the Claims and BAP Administrations.

20. The Committee will collaborate with the BAP and Claims Administrators, and the Special Master, to create a report for the Court recommending immediate measures to improve the Claims and BAP administrative processes. To Committee should convene within 7 days after an Order establishing the Committee members, and submit its report to the Court within 30 days of the Order. After the report is submitted, Zimmerman Reed respectfully requests that the Court hold a hearing on the report.

21. The Committee should emphasize:

- a. Reducing delays and ensuring the timely resolution of Class Member Claims;
- b. Recommending mandatory status updates from the Claims Administrator on the progress of their review of Claims and the causes of any delay;
- c. Recommending immediate and clear timeframes for the review of Claims;
- d. Improving information on the Settlement Agreement website and portal to keep Class Members informed of the progress of the review of their Claims;
- e. Reviewing the AAP's workload and completion rates and suggesting improvements to the AAP's review process;
- f. Implementing mechanisms and procedures to immediately challenge whether audits and appeals were made in good faith;
- g. Recommending deadlines to request an audit of a Claim to ensure audits do not unnecessarily delay the payment of a claim;
- h. Setting deadlines for the BAP Administrator to schedule Class Members for their BAP appointments;
- i. Setting deadlines for the BAP Administrator to provide BAP reports to Class Members, and recommending immediate notices to Class Members who potentially have a neurocognitive disease;

- j. Identifying disagreements as to the Settlement's interpretation to be resolved by the Court; and,
- k. Making recommendations on any other issue that may be impairing the efficient and accurate resolution of the Claims and BAP Administrative processes.

22. The Administrative Committee will also be tasked with improving the transparency of the Settlement Administration, including creating educational materials for Class Members detailing the administrative process and expected timelines and holding a public hearing to discuss and solicit views on delays and concerns with administrative processes.

23. The Administrative Committee structure aligns with the Settlement's oversight framework. The Court maintains continuing and exclusive jurisdiction over the Parties, the Class Members, Special Master, the Claims and BAP Administrators, and AAP, and it may resolve any "disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement agreement" Settlement at § 27.1. The Special Master is tasked with taking "all steps necessary to faithfully oversee the implementation and administration of the Settlement Agreement." *Id.* at § 10.1(a)(ii). The Special Master also oversees both the Claims Administrator, *id.* at § 10.2(a)(iv), and the BAP Administrator, *id.* at § 5.6(a)(iv), and must resolve "complaints raised by Co-Lead Class Counsel, Counsel for the NFL Parties, the BAP Administrator, [and] Claims Administrator . . . regarding aspects of the Class Action Settlement." *Id.* at § 10.1(b)(i)(2). The Administrative Committee, in

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
AB LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-
MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**JOINDER OF McCORVEY LAW, LLC IN MOTION
BY THE LOCKS LAW FIRM FOR APPOINTMENT
OF
ADMINISTRATIVE CLASS COUNSEL AND FOR A
HEARING**

The Locks Law Firm filed a Motion on March 20, 2018 (Doc. 9786) seeking various relief including a hearing on failures with respect to Claims Processing. McCORVEY LAW, LLC, an original member of the Court-appointed Plaintiffs'

Steering Committee, joins in the request on behalf of its clients for an appointment of administrative class counsel and for a hearing to correct failures in Settlement implementation.

McCORVEY LAW, LLC was one of the firms that originated this litigation. We represent more than 50 registered players. We have filed 1 pre-effective date claim. The implementation of the Settlement shows that the terms of the Settlement Agreement are not being applied properly and are often applied in a way that prejudices the Class and benefits the NFL. We concur with the list set forth in the filed Memorandum of the Locks Law Firm (Doc. 9786) at pages 6-7.

In addition, on information and belief, there may be other amendments and rules created by the NFL and others of which the Class is not aware and for which the Class never received notice. Any new amendment or rule that may adversely affect player claims, particularly in the context of pre-effective date claims subject to the less stringent review standard of Section 6.4(b), should be subject to the review and consideration of all Class Counsel who actually represent retired players and have submitted pre-effective date claims on their behalf. Such new rules also should be reviewed by the Court as well, possibly in the context of a hearing, to determine whether the new amendment or rule prejudices player/claimants and benefits the NFL.

McCORVEY LAW, LLC respectfully requests that the Court appoint Administrative Class Counsel and hold a hearing on implementation failures to correct, among other things, failures identified in the Locks Law Firm Memorandum.

Dated: March 27, 2018.

Respectfully submitted by,

McCORVEY LAW, LLC

/s/ Derriel C. McCorvey

Derriel C. McCorvey
LA Bar Roll # 26083
TX Bar Roll# 24073351
H.D. Register, III
LA Bar Roll # 35290
102 Versailles Blvd., Ste. 620
Post Office Box 2473
Lafayette, LA 70502
Tel. 337-291-2431
Fax 337-291-2433
derriel@mccorveylaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all counsel of record by the Court's ECF system.

Dated: March 27, 2018

McCORVEY LAW, LLC

/s/ Derriel C. McCorvey
Derriel C. McCorvey

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
RETIRED PLAYERS' CONCUSSION
INJURY LITIGATION

THIS DOCUMENT APPLIES TO
ALL PLAINTIFFS

No. 2:12-md-02323-AB

MDL NO. 2323

Hon. Anita B. Brody

**JOINDER IN REQUEST FOR A HEARING TO CORRECT FUNDAMENTAL
IMPLEMENTATION FAILURES IN CLAIM PROCESSING**

The Locks Law firm filed a motion on March 20, 2018 (Dkt 9786) (the “Locks motion”) seeking various relief including a hearing for several players in claims processing in connection with the NFL Amended Settlement Agreement (“Settlement Agreement”).

Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”) joins in the motion on behalf of pre-affective diagnoses clients as well as post effective date clients and respectfully request a hearing to inform the Court of the failures and confusion, so that they can be corrected.

LCHB has filed section 6.4(b) pre-affective diagnosis date claims for certain retired players as well as post effective diagnosis date claims for certain retired players whose doctors have reported that the retired players carry the qualified diagnoses required under the Settlement Agreement. Our experience in the claims process shows that the terms of the settlement agreement are not being faithfully applied, similar to that described in the Locks’ memo at pages 6-7(a)(n) (identifying 14 failures).

In addition to the 14 failures identified in the Locks’ memo having to do with the pre-effective date claimants, the claims administrator has also made a “new rule” for pre-affective diagnosis date claims. For example, despite that the pre-affective diagnosis date claim requires the supporting opinion of a board certified physician who is a board certified neurologist, or neuro-psychiatrist, the claims administrator now requires several additional and previously unmentioned additional steps. The Claims Administrator has sought to interview the physicians who examined the claimant, without adequate HIPPA’s. The Claims Administrator has required the submission of five (5) years of medical records and employment records prior to the date the claim was filed, which is otherwise not required under the Settlement Agreement. There is nothing in the Settlement Agreement that calls for that production. In addition, the Claims Administrator and the NFL have required neuropsychological testing for pre-effective date

claims, when there is no requirement for that testing under the Amended Settlement Agreement. The Claims Administrator has requested reports from the NFL disability process that similarly are not required under the Amended Settlement Agreement. Importantly, players have a strong basis to believe the disability process in the NFL is a biased NFL-funded system. The players would have never agreed to this Settlement if they knew the NFL-funded doctors in the NFL disability system would have some say in whether the claims brought in this litigation are awarded or not. These new rules and requirements are not part of the Amended Settlement Agreement. Specifically it is not written down in section 6.3 (qualifying diagnosis) nor in Exhibit 1 (injury definitions).

Like the other “new rules” that the Claims Administrator has set-up (see Dkt 9786 at 15-17), no class member ever received notice of any of these rules prior approval of the settlement by this Court. The deleterious effect of these new rules and requirements is that many retired players who can prove a qualifying diagnosis and are entitled to an award will not receive an award because materials requested may not exist; many retired players who can prove a qualifying diagnosis may be denied because they did not have a certain testing done by non-physicians such as neuropsychologists; and, in other cases, many awards are woefully delayed at every stage as the Claims Administrator requires additional steps that were never part of the settlement.

The problems are continuous and ever-growing. This is particularly problematic for the older retired players filing pre-affective date diagnosis claims because they were never on notice that their earlier medical records (for example through 2010) cannot be relied upon to establish a diagnosis date; and because due to their older age there was already severely discounted; and especially problematic for younger players who are frustrated in attempting to meet these

requirements. Further, at the hearing where the settlement was first explained, the Claims Administrator suggested no attorney was required to process a player's claim. It has become increasingly clear that the opposite is true. The claims process is filled with previously undisclosed or earlier undescribed new rules, obstacles and blocks that only counsel can assist clients to maneuver.

We respectfully request that the Court hold a hearing to address these fundamental implementation problems.

Dated: March 28, 2018

Respectfully Submitted,

By: /s/ Wendy R. Fleishman
Wendy R. Fleishman

Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street
8th Floor
New York, New York 10013
Telephone: (212) 355-9000
Facsimile: (212) 355-9592
wfleishman@lchb.com

Kenneth Byrd
Andrew R. Kaufman
Lieff Cabraser Heimann & Bernstein, LLP
222 2nd Avenue South
Suite 1640
Nashville, TN 37201
Telephone: (615) 313-9000
Facsimile: (615) 313-9965
kbyrd@lchb.com
akaufman@lchb.com

Attorneys for Claimants

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing document was served electronically via the Court's electronic filing system on the 28th day of March, 2018, upon all counsel of record.

Dated: March 28, 2018

/s/ Wendy R. Fleishman
Wendy R. Fleishman

1530769.2

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden, *on behalf
of themselves and others similarly situated,*

Plaintiffs,

v.

National Football League and NFL
Properties LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

Civ. Action No. 14-00029-AB

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINDER OF THE LAW OFFICE OF HAKIMI & SHAHRIARI
IN MOTION OF THE LOCKS LAW FIRM
FOR APPOINTMENT OF ADMINISTRATIVE COUNSEL**

Comes Now, Attorney Peter Shahriari and The Law Office of Hakimi & Shahriari ("H&S"), hereby join Class Counsel Locks Law Firm's March 20, 2018 (ECF. 9786) Motion for Appointment of Administrative Counsel and a hearing to seek Court intervention regarding the processing of claims.

The settlement is broken. It is time to ask why.

The settlement administration is not working because of the NFL Parties' undue influence. Rather than meet its obligation to compensate the Retired NFL Players it allegedly victimized, the NFL Parties are turning the Settlement on its head by accusing doctors and their own retirees of fraud. They continue to try to hide the dangers of the game and the inconvenient truth of *so many brain damaged players*.

Any fix to the Settlement must acknowledge the reason a fix is necessary: The NFL Parties influence. It is vital that the Court address the root of the problem so that it does not persist.

The Settlement is off track. The NFL Parties have been able to evade their obligations to compensate Retried NFL Players. They were able to avoid discovery during the litigation, and now are continuing their campaign to hide the truth about the dangers of the game by calling their former players and their doctors deceptive and fraudulent, while saving billions they owe to Retired NFL Players. The NFL Parties' influence has pervaded the structure of the Settlement and how this entire process is being characterized. It is time to examine why we are where we are. This Joinder is filed on behalf of the approximately two hundred and fifty (250) clients of this firm, who are Retired NFL Players, family of Retired NFL Players and members of the Class certified in this matter. While journalists are increasingly alerting the public to the fatal problems with the implementation of the claims process, as counsel for approximately two hundred fifty (250) Settlement Class Members, we can verify growing frustrations from doctors, scientists, other law firms, and suffering Class Members and their families regarding the fundamental failures of the claims administration process which threaten the entire Settlement. For reasons now known and yet unknown, the claims process is bogged down with delays and riddled with policy inconsistencies. Even the most basic terms (i.e. the concept of "generally consistent", or the role

of audits) of the Settlement Agreement are being implemented in ways that defy imagination, to the detriment of the Class Members.

Adding to the problems are newly created amendments to the plain meaning of the Settlement Agreement which are being subtly introduced without being agreed to. These amendments are material and were not originally part of the Settlement approved by the Court, and upheld on appeal, *over strenuous objections* by some parties. These amendments are harmful to the Class, numerous and totally reverse the bargained for promises of the Settlement, proving fatal to the system.

People are losing confidence in the ability of the Settlement to deliver. H&S files this joinder in hopes of establishing confidence. The Locks Law Firm's representation of more than eleven hundred (1,100) Settlement Class Members coupled with their long-time involvement in the Settlement puts them in a good position to help ensure proper administration of the Settlement. There are many reasons appointment of the Locks Law Firm as Administrative Counsel is vital to the survival of the Settlement. Some of these reasons are obvious:

- a. The NFL Parties' have an ongoing financial incentive to manipulate the system to their own benefit. The Locks Law Firm has a sizable financial incentive to ensure that the terms of the Settlement Agreement do not simply benefit the NFL Parties or other parties;
- b. Because of the large number of clients they represent, the Locks Law Firm has demonstrated an intimate understanding of the nuances of the problems with the claims process. These problems are hard to detect, absent experience representing clients in the process and require hands on experience with the Settlement;

- c. The Locks Law Firm, has identified problems which have yet to be addressed, let alone resolved; and
- d. The Locks Law Firm has filed their pending motion to be appointed Administrative Counsel, demonstrating a will to insist on transparency and the proper implementation of the Settlement.

The issues raised in this Joinder and the other recent motions are not the problems. They are the symptoms of the greater problem: lack of transparency and a vacuum of advocacy for the retired players. It is not too late. It is in the interest of all involved to ensure a fair settlement implementation so that the Settlement can have a long life and can help those it promised to help – the retirees who are patiently suffering. Otherwise, we are concerned that the growing lack of confidence will spell an end to the Settlement in its current form.

WHEREFORE, H&S respectfully requests that this Honorable Court appoint The Locks Law Firm as Administrative Counsel and hold a hearing regarding the administrative issues which have brought the Settlement to the brink of a collapse.

Respectfully submitted,

s//Peter Shahriari//
Peter Shahriari, Esq.
Ca. Bar No. 237074
THE LAW OFFICE OF HAKIMI &
SHAHRIARI
7080 Hollywood Blvd., Suite 804
Los Angeles, California 90028
Telephone: (323) 672 – 8281
Facsimile: (213) 402 – 2170
peter@handslawgroup.com
Attorney for Individual Class Members

CERTIFICATE OF SERVICE

I hereby certify that the above has been filed with the Clerk of Court's EF / ECM system, which will provide service to all parties designated to receive service this March 28, 2018.

s//Peter Shahriari//
Peter Shahriari, Esq.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINDER OF CASEY GERRY IN MOTION BY THE LOCKS
LAW FIRM FOR APPOINTMENT OF ADMINISTRATIVE
CLASS COUNSEL AND FOR A HEARING**

The Locks Law Firm filed a Motion on March 20, 2018 (Doc. 9786) seeking various relief including a hearing on failures with respect to Claims Processing.

Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP ("Casey Gerry"), joins in

the request on behalf of its clients for an appointment of administrative class counsel and for a hearing to correct failures in Settlement implementation.

Casey Gerry was one of the law firms appointed by this Court to serve on the Plaintiffs' steering committee. The implementation of the Settlement shows that the terms of the Settlement Agreement are not being applied properly and are often applied in a way that prejudices the Class and benefits the NFL. We concur with the list set forth in the filed Memorandum of the Locks Law Firm (Doc. 9786) at pages 6-7.

In addition, on information and belief, there may be other amendments and rules created by the NFL and others of which the Class is not aware and for which the Class never received notice. Any new amendment or rule that may adversely affect player claims, particularly in the context of pre-effective date claims subject to the less stringent review standard of Section 6.4(b), should be subject to the review and consideration of all Class Counsel who actually represent retired players and have submitted pre-effective date claims on their behalf. Such new rules also should be reviewed by the Court as well, possibly in the context of an hearing, to determine whether the new amendment or rule prejudices player/claimants and benefits the NFL.

Casey Gerry respectfully requests that the Court appoint Administrative Class Counsel and hold a hearing on implementation failures to correct, among other things, failures identified in the Locks Law Firm Memorandum.

Dated: March 28, 2018.

Respectfully submitted,

CASEY, GERRY, SCHENK,
FRANCAVILLA, BLATT &
PENFIELD, LLP

/s/ Frederick Schenk

Frederick Schenk
California Bar No. 086392
110 Laurel Street
San Diego, CA 92101
Ph: (619) 238-1811
Fax: (619) 544-9232
fschenk@cglaw.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**JOINDER IN MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM FOR
APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

Class Counsel Podhurst Orseck, P.A. ("Podhurst") joins its Co-Class Counsel, the Locks Law Firm, in respectfully requesting that the Court appoint a committee represented by, among others, the Locks Law Firm to serve as administrative class counsel with respect to the Settlement, and that the Court hold a hearing to address issues concerning implementation and administration of the Settlement. The Settlement promised ailing Class Members a fair, simple, and streamlined MAF claims process, as well as an efficient and responsive BAP system. Unfortunately, these promises have been broken, primarily because of the NFL's refusal to honor its obligation to implement the Settlement "in good faith." *See* Class Action Settlement

Agreement, § 30.11. As explained in detail in the Locks Law Firm’s motion (ECF No. 9786), appointing administrative class counsel is necessary to provide a structural safeguard to fulfill the bedrock promises and objectives of the Settlement.¹

From the outset, Podhurst has played a meaningful and constructive role in both this litigation and the Settlement, a fact recognized by Co-Lead Class Counsel Seeger Weiss. We have served on both the Plaintiffs’ Executive Committee and the Plaintiffs’ Steering Committee, negotiated key terms of the Settlement, and were appointed Class Counsel in connection with the Settlement. In addition, through our individual representation of hundreds of Class members, we have extensive experience with the BAP and the MAF claims process, and remain devoted to the fair and faithful implementation of the Settlement.²

We share the specific concerns highlighted by the Locks Law Firm in its motion. (ECF No. 9786 at 6-7.) Our direct experience with the claims process confirms the persistence of the problems the Locks Law Firm identified. Of the 18 claims that we have submitted, only 2 claims—for Parkinson’s disease and Death with CTE—have been paid, while numerous claims pending for 8-10 months have been delayed due to inexplicable audits, appeals, and notices requesting additional documents or re-testing arising primarily from de facto, unapproved

¹ Such an appointment is well within this Court’s discretion, given its explicit retention of “continuing and exclusive jurisdiction to interpret, implement, administer and enforce the Settlement Agreement, and to implement and complete the claims administration and distribution process.” (ECF No. 6534, ¶ 17.)

² Indeed, both Podhurst and the Locks Law Firm, as Class Counsel, have a continuing duty, mandated in the Settlement, “to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, *implementation*, and *administration* of the settlement embodied in the Settlement Agreement.” Class Action Settlement Agreement, § 28.1 (emphasis added).

amendments to the Settlement.³ This is not the fair, simple, and streamlined claims process that the players were promised or the Court approved.

Further, as documented in the joinder notice submitted by Zimmerman Reed, the BAP system is plagued by similar delays and problems. (ECF No. 9820 at 6-9.) Players usually must wait months for an appointment and often much longer to eventually receive a report following the appointment. This is not the efficient, responsive program that the players were promised or the Court approved.

As detailed in the Locks Law Firm's motion, many of the escalating problems in the implementation of the Settlement are attributable to the NFL's obstinate, unreasonable litigation tactics. To remedy these problems with the implementation of the Settlement and to prevent further delays in delivering benefits to those in need, a committee should be appointed to serve as administrative class counsel. In addition, the independence of the Claims Administrator needs to be safeguarded from what appears to be too much influence exerted by the NFL. In response to these and other concerns that Podhurst and the Locks Law Firm expressed many months ago, Co-Lead Class Counsel Seeger Weiss made some effort to update Class Counsel as to certain issues. However, the persistence of implementation problems and extended delays demonstrates that enhanced structural protection is unquestionably needed. Firms with extensive experience directly dealing with players and interacting with the claims process should be appointed to a committee to ensure that the Settlement is fairly and faithfully implemented.

³ The Court's Amended Final Order and Judgment provides: "Without further approval from the Court, and without the express written consent of Class Counsel and Counsel for the NFL Parties, the Settlement Agreement is not subject to any change, modification, amendment, or addition." (ECF No. 6534, ¶ 18.) The Court has not approved, nor has Class Counsel given express written consent to, any change, modification, amendment, or addition to the Settlement since its final approval. Thus any change, modification, amendment, or addition reflected in the implementation of the Settlement is null and void.

Dated: March 29, 2018

Respectfully submitted,

PODHURST ORSECK, P.A.

SunTrust International Center
One S.E. 3rd Ave, Suite 2300
Miami, FL 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382

By: /s/ Steven C. Marks
STEVEN C. MARKS
Fla. Bar. No. 516414
Email: smarks@podhurst.com
STEPHEN F. ROSENTHAL
Fla. Bar No. 0131458
Email: srosenthal@podhurst.com
RICARDO M. MARTÍNEZ-CID
Fla. Bar No. 383988
Email: rmcid@podhurst.com
MATTHEW P. WEINSHALL
Fla. Bar No. 84783
Email: mweinshall@podhurst.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2018, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven C. Marks
Steven C. Marks, Esq.

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:18-md-2323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

No. 2:12-md-02323-AB
MDL No. 2323

Plaintiffs,

v.

Hon. Anita B. Brody

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

ORDER

In relation to the allocation of class benefit fees among counsel representing the class, the Court will hold a **HEARING** on **May 15, 2018**, at **10 a.m.** in Courtroom 7B on the 7th Floor of the U.S. Courthouse, 601 Market St., Philadelphia, PA. All attorneys who were appointed Co-Lead Class Counsel, Class Counsel, or Subclass Counsel, as set forth in ECF No. 6084, must appear.¹

On or before **May 1, 2018**, each law firm seeking payment from the Attorneys' Fees Qualified Settlement Fund² must submit a sworn declaration answering the questions and attaching the documents set forth below.³

¹ Additional lawyers may be ordered to appear at this hearing, after the Court has reviewed the declarations and related materials discussed below.

² This includes all law firms seeking fees, including all law firms listed in Co-Lead Class Counsel's Proposed Allocation of Common Benefit Attorneys' Fees (ECF No. 8447), and all

SWORN DECLARATION:

This declaration must be filed through the Court's Electronic Filing System in the docket specifically set aside for these submissions: **18-md-02323-AB**.

In answering questions with subsections you must provide individual answers for each subsection. The sworn declaration must contain answers to the following questions:

1. How many Settlement Class Members⁴ have you, your law firm or⁵ any attorney associated with your law firm:
 - A. Previously represented in this litigation and do not currently represent; or
 - B. Currently represent in this litigation?
2. How many Settlement Class Members previously or currently represented by you, your law firm or any attorney associated with your law firm:
 - A. Have received a Monetary Award;
 - B. Have been informed that they are entitled to receive a Monetary Award;
 - C. Have applied for a Monetary Award; or

firms seeking fees through the Petitions for Attorneys' Fees filed by the "Faneca Objectors" (ECF No. 7070), the "Armstrong Objectors" (ECF No. 7232), the "Jones Objectors" (ECF No. 7364), and the "Alexander Objectors" (ECF No. 8725).

³ Where the law firm seeking payment from the Attorneys' Fees Qualified Settlement Fund has members who were appointed by this Court as Co-Lead Class Counsel, Class Counsel, Subclass Counsel or were appointed to the Plaintiff's Executive Committee or Plaintiff's Steering Committee, as set forth in ECF No. 6084, the declaration must be signed by every attorney who was appointed.

⁴ Unless otherwise noted, the terms used in this Order that are defined in the Settlement Agreement have the same meanings in this Order as in the Settlement Agreement.

⁵ As used herein, "or", "and" and "and/or" is to be interpreted inclusively, so that the greatest amount of responsive information is provided to the Court.

D. That you have knowledge that they will be eligible to receive a Monetary Award?

3. How many Settlement Class Members previously or currently represented by you, your law firm or any attorney associated with your law firm have entered agreements to assign their rights to a Monetary Award (“Assignment(s)”) Assignment(s) include any agreements that are similar to the agreements attached to this Court’s Explanation and Order relating to the Third Party Funder Litigation (ECF No. 9531).

Assignments further include, but are not limited to, any agreement with any of the following third party litigation funders:

- Atlas Legal Funding, LLC (to include the following related entities: Atlas Legal Funding I, L.P., and Atlas Legal Funding II, L.P.)
- Cambridge Capital Group, LLC (to include the following related entities: Cambridge Capital Group Equity Option Opportunities L.P., and Cambridge Capital Partners, L.P.)
- Cash4Cases, Inc.
- Global Financial Credit, LLC
- HMR Funding, LLC (to include the following related entities: HMR Fund I, LLC and HMR Fund II, LLC)
- Justice Funds/Justicefunds, LLC
- Ludus Capital, LLC
- Peachtree Funding Northeast, LLC/Settlement Funding, LLC (to include the following related entities: Peachtree Settlement Funding, LLC, Peachtree Originations, LLC, Peachtree Financial Solutions, LLC, Peach Holdings,

LLC, PeachHI, LLC, Orchard Acquisition Co. LLC, JGWPT Holdings, LLC, JGWPT Holdings, Inc., J.G. Wentworth, LLC, J.G. Wentworth S.S.C. Limited Partnership, J.G. Wentworth Structured Settlement Funding II, LLC, and Structures Receivables Finance #4, LLC)

- Pravati Legal Funding/Pravati Capital, LLC
 - RD Legal Funding, LLC (to include the following related entities: RD Legal Finance, LLC, and RD Legal Funding Partners, LP)
 - Thrivest Specialty Funding, LLC
 - Top Notch Funding/Top Notch Lawsuit Loans/Top Notch Funding II, LLC
 - Walker Preston Capital Holdings, LLC
 - Case Strategies Group (formerly, NFL Case Consulting, LLC)
 - Legacy Pro Sports, LLC
4. Of the total number of Settlement Class Members included in your answer(s) to question #2, how many of these Settlement Class Members have also entered into the Assignments referenced in question #3?
5. Are you, your law firm or any attorney associated with your law firm obligated to pay or forward (directly or indirectly) any portion of a Settlement Class Member's Monetary Award to any third party litigation funder?
6. Explain any other role that you, your law firm, or any attorney associated with your law firm may have had in creating, promoting, or facilitating the Assignments referenced in question #3 and/or the obligations referenced in question #5.
7. Do you, your law firm, any attorney associated with your law firm or any individual or entity related to your law firm have any direct or indirect (professional or personal)

- association with any of the third party litigation funders used by Settlement Class Members previously or currently represented by you, your law firm or any attorney associated with your law firm? If so, provide details of that association. If any of these individuals and/or entities had such an association in the past, provide details of that association. If any of these individuals and/or entities anticipates having such an association in the future, provide details of that association.
8. Have any of the Assignments referenced in question #3 been resolved in accordance with the rescission process provided for in ECF No. 9517? If so, indicate those that have been resolved by their designated letter (*See* “Documents,” below) and the date of the resolution.

DOCUMENTS:

Counsel must ensure that Settlement Class Members’ identity and personal data are redacted from these filings. References that would identify a Settlement Class Member must be redacted, replacing each Settlement Class Member’s name with letters (*i.e.*, A, B, or C ... AA or BB ...) so that it will be clear to the Court if there are multiple submissions that relate to a single Settlement Class Member.

Attach true and correct copies of the following documents⁶ to the declaration:

- A. Any Assignments referenced in question #3;
- B. Any collateral documents to the Assignments referenced in subsection (A),
including, but not limited to:

⁶ All documents referenced below should be complete and contain all appendices, exhibits and/or attachments. The term “documents” is to be interpreted inclusively, to include all Assignments referenced in question #3 and other agreements.

- i. Any documents creating, or relating to, any of the obligations referenced in question #5;
 - ii. Any documents relating to an Assignment referenced in question #3 where you, your law firm or any attorney associated with your law firm is named or is a signatory; and/or
 - iii. Any other documents related to an Assignment referenced in question #3 that are in your, your law firm, or any attorney associated with your law firm's possession, custody or control.
- C. All versions and drafts of the documents described in subsections (A)-(B) and all such documents entered into or proposed, even if such documents have been terminated or replaced by subsequent documents.
- D. All written communications regarding any of the documents described in subsections (A)-(C) between any third party litigation funder and you, your law firm, or any attorney associated with your law firm.

s/Anita B. Brody

ANITA B. BRODY, J.

3/28/2018

COPIES VIA ECF ON

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

NO. 2:12-MD-02323-AB

MDL NO. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MOTION TO JOIN CLASS COUNSEL LOCKS LAW FIRM'S REQUEST TO APPOINT
ADMINISTRATIVE COUNSEL AND REQUEST FOR A HEARING TO SEEK COURT
INTERVENTION ON THE SETTLEMENT IMPLEMENTATION AND THE PROCESSING
OF CLAIMS

1. The undersigned Mitnick Law Office respectfully requests to join the Motion of Class Counsel, Locks Law Firm to be named administrative Class Counsel and for a hearing to

seek Court intervention on the Settlement implementation and the processing of claims arising out of the NFL Concussion Settlement.

2. Mitnick Law office individually represents over 240 retired NFL players and is co-counsel with Locks Law Firm for an additional 1000 plus players, totaling representation and interest in excess of 1200 potential claimants. From personal knowledge and experience, Locks Law Firm's submission truly and accurately details the ever increasing defects of the Settlement claim process and the deceptive practices and undue influence of the NFL in the implementation of the Settlement. As an attorney who represents a mass number of retired players and as the primary attorney who traveled the country, assisting Class Counsel in educating the global community of Retired Players on the terms of the Settlement Agreement, securing a 99% endorsement of the Settlement, it is time that the NFL parties stop inhibiting the Claim Administration process and start protecting the Players who were faithful to the League and who were guaranteed independence in the Claim process by all Parties to the Settlement Agreement.
3. The Settlement terms that were set out in detail in the revised Settlement Agreement have fundamentally changed without the consent of the very individuals who were to be the beneficiaries of the Agreement, the Retired Players . The Settlement belongs to those players and their families. They are who matters most. The Locks Law Firm's dedication to this litigation and their experience in past Settlement implementation warrants their appointment as Administrative counsel. This Settlement was negotiated in good faith by co-lead counsel, however given the actions of the NFL throughout the implementation process thus far, one must consider whether the NFL negotiated in good faith as well.

The actions of the NFL speak volumes to their true intentions and those actions warrant the appointment of Administrative counsel and Court intervention.

4. As specified in Locks Law Firm's application to the Court, claims involving level 1.5 and level 2.0 dementia, as well as claims for retired players who have been diagnosed with Alzheimer's disease have been unreasonably and often inexcusably delayed or denied from the onset of the claims administration process.
5. The facts as set forth in counsel's submission to the Court are almost an identical set of facts experienced by this office with regard to numerous claims that have been delayed by audit, appealed by the NFL, or outright denied by the Claim Administrator for reasons already set forth in Lock's memorandum to the Court.
6. A further and telling example of an egregious situation is the claim of a 61 year old retired player who *received* a monetary award \$1,150,000 for Alzheimer's disease at the age of 58 from the AAP. The award was then appealed by the NFL Parties who question "causation" (which was specifically waived by the NFL in the Settlement Agreement).

Skillfully written, the NFL in its appeal of this Retired Player states the following:

"Far from taken in "bad faith," the NFL Parties' argument appealing Mr. [REDACTED] claim—i.e., that the diagnosing physician's failure to rule out Mr. [REDACTED] lithium use, sleep disorder, chronic headaches, and depression as the causes of his condition rendered his Alzheimer's diagnosis invalid..."

"While the Criteria for Research Guidelines may be more restrictive in certain areas, Co-Lead Class Counsel's statement with respect to mixed etiologies is simply untrue. The Diagnostic Guidelines identify in a separate section (omitted from Co-Lead Class Counsel's statement) additional "differential diagnos[e]s," or other etiologies that are incompatible with an Alzheimer's diagnosis. (Diagnostic Guidelines, Ex. 1 at 48.) These differential diagnoses include, among others, things" include a variety of physical diseases," and "a depressive disorder": Differential diagnosis. Consider: a depressive disorder (F30-F39); delirium (F05); organic amnesic syndrome (F04); other primary dementias, such as in Pick's Creutzfeldt-Jakob or Huntington's disease (F02.0); secondary dementias

associated with a variety of physical diseases, toxic states, etc. (F02.8); mild, moderate or severe mental retardation (F70-F72)”.

The NFL memorandum was written by an attorney representing the NFL who is not a physician. It is incomprehensible that the NFL is questioning a board certified, authoritative neurologist’s findings, as well as the AAP’s finding of Alzheimer’s through a monetary award to the Retired Player. I don’t know of a more appropriate example of “bad faith” dealings in this matter.

7. Another example of the disingenuous intent of the NFL concerns a unnamed Retired Player who is 67 years old and has been diagnosed with Alzheimer’s disease since turning 63 years old. The Player is currently institutionalized in a Alzheimer’s facility and has been given only several years to live. Even though this player’s condition and “story” were utilized in *a-day-in-the-life-of* video that was submitted to the Court by Co-Lead counsel in consideration of final settlement, his claim was denied after being reviewed by the Claim Administrator because the AAP Physician did not find that his qualifying diagnosis was made by an appropriate physician. Under the terms of the Settlement Agreement, his claim was resubmitted by another one of his treating and diagnosing physicians. Subsequent to this re-submitted claim to the Claims Administrator, the Player received a notice of audit delaying the matter once again indefinitely. The matter has been ongoing since his initial claim was submitted in April of 2017. One year later, no award or payment has been made. The Player’s condition has become more severe and the frustration and disappointment that this player and his family have experienced is inexcusable.
8. The arguments as set forth in Locks Law Firm’s submission to the Court attesting to the problems with the Settlement implementation are accurate, continuing and non-

discriminatory in their effect on Retired players everywhere. After educating over 10,000 players around the Country to the Settlement terms from the time of preliminary approval through the time of final approval, it can be attested to that terms as set out in the Settlement Agreement are far different than the terms currently in place today. Mitnick Law Office respectfully requests to be joined in the Motion for the appointment of Administrative Counsel and for Court intervention.

WHEREFORE, the undersigned counsel on behalf of Plaintiffs represented by Mitnick Law office seek to join in the application for a public hearing before this Court to enforce the true terms of the Settlement terms and to appoint Locks Law Firm as Administrative Counsel in the matter.

DATED: March 29, 2018

Respectfully submitted

/s/ *Craig R. Mitnick*

MITNICK LAW OFFICE
Craig R. Mitnick
Attorney for Plaintiffs

CERTIFICATION OF SERVICE

I hereby certify that on March 29, 2018, I caused the foregoing Motion to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF System, which will provide electronic notice to all counsel and parties.

DATED: March 29, 2018

/s/ Craig R. Mitnick

MITNICK LAW OFFICE

SEEGERWEISS LLP

March 29, 2018

Via ECF

Honorable Anita B. Brody
United States District Judge
Eastern District of Pennsylvania
601 Market Street
Room 7613
Philadelphia, PA 19106

Re: *In re National Football League Players' Concussion Injury Litigation*,
No. 12-md-2323-AB

Dear Judge Brody:

I am writing in regards to the Motion of Class Counsel the Locks Law Firm for Appointment of Administrative Counsel which was filed on March 20, 2018. ECF No. 9786. As your Honor may have noticed, some firms have filed and, as of this afternoon, are still filing Joinders to that Motion. ECF Nos. 9813, 9816, 9819, 9820, 9821, 9824, 9827, 9829, 9830, 9831, and 9834. We would be better able to respond fully to the issues raised by the Motion and any Joinders if a deadline is set for the filing of any additional Joinders and the record we are responding to is closed.

Accordingly, I request that your Honor enter an order setting March 30, 2018 as the deadline for the filing of any Joinders or other papers in support of the Motion. I also request that we be permitted to file our response to the Motion and all related papers on April 10, 2018. To ensure that this can be quickly resolved and avoid even further burgeoning of the pleadings, we believe that there will not be need for further replies.

I remain available at you Honor's convenience.

Respectfully,

/s/ Christopher A. Seeger
Christopher A. Seeger
Co-Lead Class Counsel

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: March 29, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

Civ. Action No. 14-00029-AB

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINDER OF JR WYATT LAW IN MOTION BY THE LOCKS
LAW FIRM FOR APPOINTMENT OF ADMINISTRATIVE COUNSEL**

JR Wyatt Law joins The Locks Law Firm's Motion (the "Motion") for Appointment of Administrative Class Counsel (Doc. 9786).

This Firm confirms the difficulties in the settlement's implementation outlined in the Motion.

Unfortunately, these difficulties appear to have reached a breaking point and many players no longer have confidence in the process or believe that they will ever get paid.

Out of the 1119 ‘Level 1.5’ and ‘Level 2.0’ claims that have been filed in the last year, only 6 have been paid. Each of these 1119 claims represents an actual human being (and their respective families) who is suffering. Each of these claims has been certified by a doctor under penalty of perjury. Doctors are not lying in mass. Even the 200+ players who have been diagnosed in the MAF/BAP are not immune from attack and are not receiving the payments promised to them.

A significant benefit achieved in this settlement was the promise that the claims process would be manageable. Players would not die while waiting for their settlement checks. This promise is currently a faded hope.

This Firm believes that the class and the players it represents will be best served by having an administrative counsel actively dealing with pending claims and communicating with the class and the lawyers representing individual players.

Dated: March 29, 2018

JR WYATT LAW, PLLC

/s/

J.R. Wyatt, Esq.
NY Bar No.: 3938016
49 West 37th Street, 7th Floor
New York, NY 10017
Telephone: (212) 557-2776
Facsimile: (646) 349-2776

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2018, I cased the foregoing Joinder of JR Wyatt Law Firm in Motion by The Locks Law Firm for Appointment of Administrative Class Counsel to be served via the Electronic Case Filing (ECF) system in the United States District of Pennsylvania, on all parties registered for CM/ECF in the above captioned matter.

/s/
By: _____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Case No. 2:123-md-02323-AB MDL

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of himself and others similarly
situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 14-cv-29-AB

National Football League and NFL Properties,
LLC, successor-in-interest to NFL Properties,
Inc.

Defendants.

**NOTICE OF JOINDER IN MOTION BY THE LOCKS LAW FIRM FOR
APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

Robins Cloud LLP, which represents over 150 players and their families in this action, and has filed over 40 claims, hereby join in the Motion by the Locks Law Firm for Appointment of Administrative Class Counsel and for a Hearing [ECF No. 9786], for the reasons states therein and in its Memorandum in Support.

WHEREFORE, this court should grant the Motion by the Locks Law Firm for Appointment of Administrative Class Counsel and for a Hearing.

Dated: March 29, 2018

Respectfully submitted,

Attorney Ian Cloud, Robins Cloud, LLP

By: /s/ Ian P. Cloud

Ian P. Cloud
State Bar No. 00783843
Robins Cloud, LLP
2000 West Loop South. 22nd Floor
Houston, TX 77027
Tel: (713) 650-1200
Fax: (713) 650-1400
icloud@robinscloud.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing Notice of Change of Firm Affiliation was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: March 29, 2018

/s/ Ian P. Cloud
Ian P. Cloud



LOCKS LAW FIRM

The Curtis Center
601 Walnut Street, Suite 720 East
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106
T 215.893.0100
T 866.LOCKSLAW
F 215.893.3444
lockslaw.com

Gene Locks, Esquire

glocks@lockslaw.com

Direct Dial: 215-893-3434

March 29, 2018

Honorable Anita B. Brody
United States District Judge
Eastern District of Pennsylvania
601 Walnut Street, Room 7613
Philadelphia, PA 19106

**RE: *In re National Football League Players' Concussion Injury Litigation*
USDC, EDPA No. 12-md-2323-AB**

Dear Judge Brody:

I am writing in response to Chris Seeger's letter to you today requesting that Your Honor enter an Order setting March 30, 2018 as the deadline for the filing of any joinders to the Motion of Class Counsel the Locks Law Firm for Appointment of Administrative Class Counsel (ECF No. 9786).

Although I agree that there should be a deadline for the filing of such of such joinders, I respectfully request that all parties be given until April 4, 2008 to file joinder or other papers in support of the Motion.

In addition, I respectfully request that Locks Law Firm be given an opportunity to reply to any response filed by Mr. Seeger.

Respectfully submitted,

LOCKS LAW FIRM

BY: /s/ Gene Locks
GENE LOCKS

GL/ah

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**ANAPOL WEISS, CO-LEAD COUNSEL'S JOINDER IN THE REQUEST FOR
A HEARING REGARDING THE NECESSITY FOR ADDITIONAL SUPERVISION OF
THE ADMINISTRATION OF THE CLAIMS SETTLEMENT PROCESS.**

The Anapol Weiss law firm, by way of Sol H. Weiss (co-lead counsel) and Larry E. Coben (member of the Court appointed Executive Committee), hereby join with the Locks Law Firm's request (ECF No. 9786) for a Hearing to inquire about and address issues arising from the administration of the claims processing of the Settlement Agreement.

//

//

DATED: March 29, 2018

Respectfully submitted,

/s/ Larry E. Coben

ANAPOL WEISS

Larry Coben

Sol Weiss.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing motion was served via the Electronic Filing System to all counsel of record, Case no. 2:12-md-02323-AB, MDL No. 2323.

DATE: March 29, 2018

/s/ Larry E. Coben
Larry Coben
Counsel for Plaintiffs



LOCKS LAW FIRM

The Curtis Center
601 Walnut Street, Suite 720 East
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106
T 215.893.0100
T 866.LOCKSLAW
F 215.893.3444
lockslaw.com

Gene Locks, Esquire

glocks@lockslaw.com

Direct Dial: 215-893-3434

March 29, 2018

Honorable Anita B. Brody
United States District Judge
Eastern District of Pennsylvania
601 Walnut Street, Room 7613
Philadelphia, PA 19106

RE: *In re National Football League Players' Concussion Injury Litigation*
USDC, EDPA No. 12-md-2323-AB

Dear Judge Brody:

I am writing in response to Chris Seeger's letter to you today requesting that Your Honor enter an Order setting March 30, 2018 as the deadline for the filing of any joinders to the Motion of Class Counsel the Locks Law Firm for Appointment of Administrative Class Counsel (ECF No. 9786).

Although I agree that there should be a deadline for the filing of such of such joinders, I respectfully request that all parties be given until April 4, 2008 to file joinder or other papers in support of the Motion.

In addition, I respectfully request that Locks Law Firm be given an opportunity to reply to any response filed by Mr. Seeger.

Respectfully submitted,

LOCKS LAW FIRM

BY: /s/ Gene Locks
GENE LOCKS

GL/ah

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Letter/Notice was served on this date via the Electronic Filing System on all counsel of record in Case No. 2:12-md-02323-AB, MDL No. 2323.

DATE: March 30, 2018

/s/ Gene Locks

Gene Locks, Class Counsel

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL
PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14 – 00029 – AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants

THIS DOCUMENT RELATES TO

All Actions

**JOINDER OF KREINDLER & KREINDLER, LLP IN THE
MOTION BY THE LOCKS LAW FIRM FOR APPOINTMENT OF
ADMINISTRATIVE CLASS COUNSEL, AND FOR A HEARING**

On March 20, 2017, the Locks Law Firm filed a motion (Doc. No. 9786) seeking appointment of administrative class counsel, and a hearing, to address failures in the claims process established by the Settlement in this case. Kreindler & Kriendler, LLP, a member of the Plaintiff's Steering Committee appointed by the Court, joins the Locks Law Firm in respectfully requesting (1) that the Court appoint a committee, including among others the Locks Law Firm, to serve as

administrative class counsel for the Settlement, and (2) that the Court hold a hearing to address issues relating to the administration and implementation of the Settlement.

The Settlement was supposed to provide suffering retired NFL Players with an efficient, straightforward and most importantly fair claims process and BAP program. Sadly, the actual implementation of both the claims process and the BAP program have been riddled with delays and increasingly onerous requirements that are not part of the Settlement Agreement. As set forth more fully in the Locks Law Firm's motion (Doc. No. 9786), appointment of a committee of administrative class counsel is necessary to provide the safeguards necessary to ensure that the goals of the Settlement and promises made to the class members are achieved.

In addition to playing an important role as one of the heads of the communications committee within the Plaintiff's Steering Committee, which was responsible for the carefully constructed public relations campaign that helped bring the NFL to the negotiating table, Kreindler & Kreindler LLP represents over 190 individual class members.

In our role as counsel for many individual players and families, we have gained experience with the BAP and MAF claims process. Our experience has confirmed the concerns highlighted by the Locks Law Firm in its motion. (Doc. No. 9786, at p. 6-7). While we have received payment in 4 of the 9 claims we have submitted, multiple claims submitted have been subjected to delays, audits, and requirements to provide additional (and sometimes entirely unrelated) medical records, none of which were aspects of the claims process set forth in the Settlement Agreement agreed to by the class members. (Doc. No. 6534). In addition, none of these new requirements have been subject to Court approval as required by the Settlement Agreement. (*Id.*, at ¶ 18).

In addition, as addressed in more detail by Zimmerman Reed's joinder notice in the Locks Law Firm's Motion (Doc. No. 9820, at p. 6-9), the BAP process has been plagued by long delays

in obtaining examination appointments and reports from those examinations. Even when players obtain appointments, some dismissive providers give class members skeptical, almost adversarial examinations that do not do justice to what is envisioned by the settlement.

Not only are the claims process and BAP not the responsive and streamlined programs to which the class members agreed, but the ongoing problems outlined above and in the Locks Law Firms' Motion are causing the retired players to lose faith that the administration of the settlement is free of the undue influence of the NFL.

A committee should be appointed to serve as administrative class counsel to address the entrenched problems with implementation of the settlement and prevent additional delays in class members obtaining the benefits to which they are entitled. In addition, the Court should take the steps necessary to ensure the independence of the Claims Administrator and physicians involved in the settlement process from undue influence exerted by the NFL.

KREINDLER & KREINDLER, LLP

/s/ Anthony Tarricone

Anthony Tarricone (MA BBO# 492480)
855 Boylston Street
Boston, MA 02116
(617) 424-9100
atarricone@kreindler.com

AND

Noah H. Kushlefsky (6272)
KREINDLER & KREINDLER, LLP
750 Third Avenue
New York, New York 10017
(212) 687-8181
nkushlefsky@kreindler.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2018, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Anthony Tarricone

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION,

Plaintiffs,

vs.

NATIONAL FOOTBALL LEAGUE, et.al,

Defendants.

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**THE YERRID LAW FIRM AND NEUROCOGNITIVE FOOTBALL
LAWYERS' (1) PARTIAL JOINDER OF THE MOTION BROUGHT BY
THE LOCKS LAW FIRM FOR APPOINTMENT OF ADMINISTRATIVE
COUNSEL, (2) MOTION TO REVIEW DEPRIVATION OF APPEAL
RIGHTS AND (3) REQUESTING ORAL ARGUMENT**

The Yerrid Law Firm and Neurocognitive Football Lawyers, PLLC, join the Locks Law Motion in requesting that the Court appoint a committee represented by, among others, the Locks Law Firm to serve as Administrative Class Counsel, and that said committee also include representatives of the Individually Retained Player's Attorney's (IRPAs). The Yerrid Law Firm would respectfully request the opportunity to present oral argument on these issues as they relate to those players who are IRPA Subclass I Claimants, and state as follows:

Following the prior direction of this Court, on March 23, 2018, The Yerrid Law Firm and Neurocognitive Football Lawyers filed their Motion Requesting the Special Master Review the Fraud Detection Procedures of the Claims Administrator, to Set Aside Unreasonable Audit Notices, and to Direct the Claims Administrator to Provide Important Information to the Class Members (hereinafter the "Special Master Motion"). On or about that time, the Locks Law Firm

filed its Motion to serve as Administrative Class Counsel. Accordingly, The Yerrid Law Firm believes some of the matters identified in the Special Master Motion would be of immediate importance to the Court. The Yerrid Law Firm respectfully requests the limited opportunity to present these views as they concern Subclass I Claims represented by IRPAs.

In particular, the fraud detection procedures used by the Claims Administrator as well as its Audits have unfairly delayed the processing of claims and these Audits have also denied the Claimants of their right to a timely appeal before the Special Master. As more fully explained below, these Audits have caused an unconstitutional deprivation of Claimants' fundamental rights to due process. This fundamental deprivation of rights will cause irreparable injury as the injured Claimants have a progressive degenerative brain injury. Each day that passes, these players with fully-documented injuries will only suffer more. For these many ailing men, delay is justice denied.

Most every Class Member elected to participate in the claims procedures promoted by the ASA with the expectation that their Claim Packages would be fairly and promptly processed by the Claims Administrator. With that belief, The Yerrid Law Firm and Neurocognitive Football Lawyers (hereinafter "YLF") filed approximately 143 fully documented Claim Packages. Broken down by month, this would include 37 Claim Packages filed in May 2017, 24 Claim Packages filed in June 2017, 35 Claim Packages filed in August 2017, and the remainder thereafter. Many other players represented by YLF are still preparing claim packages and other players will seek relief through the MAF or BAP process.

All of these Claim packages filed by YLF are Subclass 1 Claims under the ASA as each had a Qualifying Diagnosis after the Class Certification Order on July 14, 2014, but prior to the Effective Date of the Settlement Agreement. Three Claims seek recovery for Alzheimer's

disease and the remaining are 1.5 or 2.0 Claims. In many cases, fully documented Claim Packages have been pending for more than ten months. For many players with clearly-documented injuries, the settlement has become an illusion. As demonstrated below, the Audit process is inherently and fundamentally wrong when these Audits are being used to delay or to search for a reason to deny an otherwise valid claim.

As argued below, the Claimants, former NFL Players, are being deprived of fundamental due process. In addition, despite the progressive nature of the disease process, not one player represented by the undersigned has received any compensation. In the Special Master Motion, Claimants asked the Special Master to immediately direct the Claims Administrator to: (1) remove from Audit any Claim that was Denied so the Appellate procedures under Article IX can be completed; (2) strictly construe the Audit requirements and remove any Claim from Audit that does not meet the specific requirements of the Audit Rules under the ASA; and (3) require the Claims Administrator to fully provide information about the number of Claims in Audit, why these Claims are in Audit as well as any other matters that will provide Audit transparency.

UNDER THE GUISE OF ITS FRAUD DETECTION AND PREVENTION PROCEDURES, THE CLAIMS ADMINISTRATOR IS SYSTEMATICALLY VIOLATING THE TERMS OF THE ASA, DENYING THE PLAYERS DUE PROCESS AND DEPRIVING THESE INJURED PLAYERS OF THEIR JUST COMPENSATION.

1. Players who Received a Monetary Award Remain Unpaid Nearly Seven Months Later and the Claims Administrator has Refused to Provide Information that Would Verify it Properly Used its Fraud Detection Powers to Further Evaluate These Claims.

On August 2, 2017, two Subclass I Claims filed by YLF received a Notice of Monetary Award affirming their 1.5 Neurocognitive Injury as documented in their respective Claim Packages. Almost eight months later, both Claims remain unpaid and are stuck in the Audit

Process.¹ These Claims are representative of the fact that only 6 of the more than 1100 1.5 and 2.0 Claims have been paid.

For the two players referenced above, as provided in each Award Notice, the deadline to Appeal or Audit the Award was September 2, 2017. Failing such action, the Claim would be paid. As these Claims were filed in May, these August Awards gave the initial appearance the ASA was working in accordance with the expectation of the players. Moreover, the report that the system was working perfectly was the message provided to the Court on September 19, 2017. YLF was present at the hearing on September 19, 2017, and had asked for the opportunity to be heard in their late filed Motion due to the effects of Hurricane Irma.

Unfortunately, although questions were being asked by YLF which we thought should be raised, an insidious process was being orchestrated that was not fully recognized. On August 23, 2017, both players referenced above received an Audit Notice but no documents were requested and no reason was given for the Audit. On information and belief, each Audit was simply filed to delay payment of the Claim and allow time for the Claims Administrator to decide how it wanted to proceed. Under any provision of Paragraph 10.3, this is not a valid use of the Audit process. Nor is there any provision of the ASA that allows the Claims Administrator to simply call a time out and suspend the rules. Accordingly, as no appeal was filed and no valid audit was actually issued, the Claims should have been paid on September 1, 2017.

Recognizing its mistake, however, on September 5, 2017, the Claims Administrator issued a second Audit Notice to each player requesting certain prior medical and employment records. No reason, however, was provided for the Audit. Knowing what has since transpired,

¹ In the Special Master Motion, YLF identified these players and their specific medical issue. Exhibits reflecting the Awards, Denial, Audits and other documents were served with that Motion. Because of the public nature of this filing, out of an abundance of caution, that information is not included here.

Claimants contend these subsequent September Audits were untimely and the Claims should have been paid.

Nevertheless, not knowing that the Audit process was being abused and wanting to act in good faith, these former players timely responded to the Audits prior to the October 5, 2017 deadline and provided the requested materials. However, some seven months later, there has been no further disposition and these Awards remain unpaid. Despite initiating an Audit on August 23, 2017, it appears the Claims Administrator has taken little or no action to investigate these claims. On January 24, 2018, YLF wrote the Claims Administrator asking what had been done in the intervening four months since YLF provided the requested record authorizations. In response, YLF learned no meaningful action had been taken on either Claim.

In addition to the failure to timely process these Claim Packages, the Claims Administrator has also refused to provide information that would validate these Claims are being promptly and properly audited. On November 1, 2017, YLF wrote the Claims Administrator asking several direct questions. In the absence of any response, on January 24, 2018, YLF wrote the Claims Administrator asking the same questions and directed our specific concern to the September Audits used on the August 2, 2017 Monetary Awards.

YLF asked these questions because YLF believes that the only basis for an Audit of a Monetary Award is under Paragraph 10.3(c). Allowing an Audit of a Monetary Award under any other Paragraph of the ASA would render the limiting language of Paragraph 10.3(c) meaningless. Accordingly, to attempt to verify these Audit rights were properly used, YLF asked the Claims Administrator how many Monetary Awards were rendered in August and what was the number of Audits issued in September under Paragraph 10.3(c) of the ASA. That Paragraph states the Claims Administrator has the unilateral right to Audit 10% of the Monetary

Awards issued. Moreover, under the ASA, Paragraph 10.3(c) is the only method by which a “Monetary Award” can be audited. As two Monetary Award Audits were issued in September, at least 20 Monetary Awards must have been issued in August. If more than two Audits were issued in September, that would require an even larger number of Monetary Awards in August. If the 10% number was exceeded, Paragraph 10.3(c) has been abused. The same analysis would apply to the August Audits if these August Audits were anything more than simply a tactical delay to obtain more time. On February 12, 2018, the Claims Administrator finally responded and refused to answer these and other questions. Had this information been provided, YLF could verify whether the Claims Administrator had exceeded its authority under Paragraph 10.3(c).

2. The Claims Administrator Has Violated the Plain Language of Article IX of the ASA by Issuing Audit Notices Against Claims that have Already Been Denied Depriving These Players of their Appellate Rights and the Requirement these Players Exercise their Appellate Rights Prior to Seeking Relief from the Trial Court in Violation of Due Process.

As will be further demonstrated below, the Claims Administrator is using the Audit procedures to engage in fishing expeditions on a massive scale. This trawling activity was used against YLF Claim Packages on January 10, 2018. These Audits were issued against Claims that had already been Denied and were undergoing Appellate Review. With respect, once a Claim has been Denied that Claim is governed by Article IX of the ASA and the Claims Administrator is without jurisdiction under the ASA to request an Audit of a Denied Claim Package.

These Audits were issued to four players, two of which had Claim packages that fully supported an Alzheimer’s diagnosis. Three of these Audits failed to request any information. In addition to the lack of jurisdiction, as noted above, using Audits to hold Claims in abeyance is not a specified purpose under the ASA. More recently, a fifth player went to extraordinary efforts to prepare and file his Appeal to the Denial of his Claim. His Appeal was filed on Friday,

March 9, 2018. On Monday, March 12, 2018, the Claims Administrator issued an Audit Request. This dilatory Audit provides every indication its use was delayed while counsel for Claimant spun their wheels preparing the Appeal. This delayed Audit also served as a discovery device and a motion for extension of time as Claimant was obligated to detail their position in his Appeal and the NFL Parties in effect received an automatic extension of time to prepare their response. Not only does the use of these Audits frustrate the appellate rights of these players, their injuries are progressing so as to cause irreparable harm.

In the case of one of the players who received the January 10, 2018 Audit with Alzheimer's disease, he filed his Appeal on December 27, 2018, and the Claims Administrator issued an Appeal Alert. The Appeal Alert is issued so the interested parties know the appellate procedures are at play. However, on January 10, 2018, he received an Audit Notice. This player is a member of his team's Hall of Fame and he has a severe traumatic brain injury from his many years in the NFL. After a battery of testing, his Qualifying Diagnosis is a Major Neurocognitive Disorder due to Probable Alzheimer's Disease. Not only was he seen by a Board Certified Neurologist, a Board Certified Psychiatrist, and a Neuropsychologist, his diagnosis was also confirmed by a Certified Brain Injury Specialist, John Merritt, M.D. In addition, a well-credentialed recently retired internist executed an affidavit stating his concerns about the problems he has personally observed afflicting that player. This physician stated he would have referred this former player for a neuropsychological evaluation had he been his patient. But, this player is without health insurance and he has only received rudimentary care for his physical injuries. Moreover, he is without a primary care doctor.

In the case of another player with Alzheimer's disease, YLF inquired whether a brief extension could be granted from the January 12, 2018, deadline to file his Appeal because of the

holiday season. Having heard no response, YLF and its partner firms worked through the holidays and nonetheless timely filed his Appeal on January 12, 2018. However, unbeknownst to counsel, an Audit had been issued against his Claim two days before his Appeal was filed. This player is a member of the Hall of Fame of a college football powerhouse and he has a severe traumatic brain injury from his years in the NFL. After a battery of testing, his Qualifying Diagnosis is a Major Neurocognitive Disorder due to Probable Alzheimer's Disease. Not only was he seen by a Board Certified Neurologist (Dr. Garner), a Board Certified Psychiatrist (Dr. Afield), a Board Certified Brain Injury Specialist (Dr. Merritt), a Board Certified Neuropsychologist (Dr. Hoffman), and a Neuropsychologist (Dr. Barror-Levine), his Alzheimer's diagnosis and his associated problems were also confirmed by his treating neurological physician (Dr. Nieves), multiple MRI Brain scans, Brain SPECT scans and other physicians who treated him during his hospitalization in 2012.

Although YLF and its partner law firms were working through the holidays on the appeals of other players who had had their Claims denied, counsel stopped work on these appeals as it appeared the NFL Parties were receiving the benefit of additional time to conduct further investigations and plan their responses to the appellate packages submitted by the Claimants. None of these Audits should have been issued and by this time, all of these Denials should have been before the Special Master for consideration of the merits of their severe injuries. All of these January 10, 2018 Audits and the Audit of March 12 fail to comply with the Audit procedures under Article X of the ASA. In addition, because there was a Denial, by definition, there is no pending Claim to Audit. Moreover, any interested party waived the right to request an Audit by taking no action while that Claim was pending.

Second, the purpose of Audits under Section 10.3 is, with good faith intent, to evaluate a Claim for fraud. The January 10 Audits are facially non-compliant. With the exception of one Audit, each Audit states “we do not require any information at this time ... [and] we will contact you if we determine that additional information and/or records are necessary.” The timing of all of these January 10 Audits also question their validity. As such, there should be a presumption all of these Audits fail to meet the standards under Paragraph 10.3. Moreover, it appears these Audits were issued to delay the appeals so that the new Appeal rules could be published prohibiting new evidence. Had there been a good faith basis to issue these Audits, these Audits would not have been at the last minute and each would have requested information and/or records to evaluate the Claim for fraud.

These Audits are further depriving rights of the Subclass 1 Players to present their procedural concerns to the Claims Administrator. Counsel representing Subclass 1 Players were the first lawyers that have openly challenged the many changes to the ASA process. For their efforts, these counsel were personally and needlessly maligned. But they were right. Moreover, none of these IRPA lawyers stand to benefit from the award of fees under the Common Benefit Fund and therefore have no interest in acting in any other interest besides seeing all of their players receive full and timely compensation. Furthermore, on November 2, 2017, this Court entered an Order Denying the Motion of X1 Law (an independently retained firm) to Determine the Proper Administration of Claims Under the Settlement Agreement. The Order stated “movants must follow the proper appeals process....” In addition, on October 24, 2017, this Court entered an order stating “[b]efore Plaintiff can attempt the extraordinary action of modifying the Settlement Agreement ... Plaintiff must submit their claim ... [and] go through the appeals process.”

Having reached the apogee of the procedures under the ASA, as further delineated by the Court, YLF worked tirelessly through the holiday season to perfect the appeals of all five of these players under Article IX, as well as the subsequent Appeal filed in March. Much to their surprise, the Claims Administrator took the ultra vires act of issuing these several Notices of Audits of Claims on January 10, 2018, and March 12, 2018. On information and belief, the issuance of these Audits was an ultra vires act at the apparent insistence of the NFL Parties whose only remedy at this point was as an Appeal under 9.7(b).

Through the issuance of these Audits, none of these players will receive procedural due process nor will they have an opportunity to be timely heard. Players with fully documented claims, including players with Alzheimer's Disease, will obtain only delay, not the relief that was intended. In addition, the direction of these six Claims into the Audit process will further delay these Claims if for no other reason than the NFL has clogged the AAP with other Audits causing further irreparable harm to these players as their claims are stalled in a procedural quagmire.

When our client filed his Appeal on January 12, 2018, he made the argument stated above, that the Claims Administrator was without the authority to issue an Audit once a Denial had been issued and the provisions of Article IX now governed the Appeal. That argument was a corollary to the rule that the only Audit that could issue after a Monetary Award was the 10% rule that allowed limited random Audits at this stage. Not only does the express language of the ASA limit Audits once a Claim is awarded or denied, it makes common sense to believe that any Audit of any Claim should be performed before the Claim reaches finality. Moreover, as noted above, Paragraph 10.3(c) becomes redundant and unnecessary if the Claims Administrator is free to issue Audits anyway.

However, for reasons unknown, and eleven days after YLF presented its argument, the Rules Governing Appeals of Claim Determinations were posted. As shown below, Appeal Rules 11, 23, and 34 violate fundamental due process. Seemingly out of order for the sequence of these rules, the last rule included as Rule 34 suggests that the Claims Administrator may place a Claim in Audit at any time. Rule 34 goes on to state that any Audit suspends the time periods applicable to an Appeal. Some eight days after the Appeal Rules were posted, the Audit Rules were posted. As shown below, Audit Rules 7 and 8 also violate fundamental due process.

Audit Rule 8 now makes clear what was only suggested in the last minute addition of Appeal Rule 34. Audit Rule 8 states the Claims Administrator may place a Claim in Audit at any time, even if the Claim has already been paid. Nowhere is there any language in the ASA that states the Audit powers extend that far. Proving that the ASA was never meant to have such unbridled authority, Part VII of the Notice of Monetary Award Determination plainly states the Award will be paid once the Audit process is complete. Nothing in Part VII says any part of the Monetary Award can be clawed back. Moreover, payment of the Award must mean that the Audit is complete. Otherwise, under Part VII, the Award could not be paid. Moreover, at most, Audit Rule 10.3(c) provides for only an approximate thirty day window for a post Award Audit as the Claims Administrator can only Audit 10% of the Claims that were awarded “during the preceding month.” These material changes to the Audit power of the Claim Administrator and the limitation of the right of review constitute a fundamental denial of due process.

Moreover, in many ways, Audit Rule 7 appears to expand the scope of the Audit power of the Claims Administrator under the ASA. For instance, it now appears the Claims Administrator can exercise the purposes of Rule 8.6(b)(to verify the sufficiency of a claim) through the Audit procedures. In other words, the Claims Administrator can issue an Audit after

a Claim has been paid to verify and investigate the nature of the sufficiency of the Claim. However, that should have been done during the first 45 days after the Claim was filed or under the limited Audit provisions of Article X (before those provisions were amended).

Further limiting the Appellants right of review to the Special Master, Appeal Rules 11 and 23 purport to limit the ability of the Claimant to submit new matters for an Appeal. Nowhere does the ASA provide that limitation. In fact, Part III of the Notice of Denial of Monetary Award Claim issued to another player on November 27, 2017 states “[y]ou must submit supporting evidence to support your appeal.” Frankly, the purpose of the ASA was to allow an injured player to document his Claim so that he could be provided relief. Now, the Claims Administrator apparently has subpoena power to follow its Audits which under Rule 7 now includes more than fraud and extends to the ability of the Claims Administrator to test the sufficiency of the documentation. However, the Claimant cannot submit new matters that may prove his injury or correct factual errors in any AAP report. This process has become decidedly unfair. And the process used to issue Audits in early January to suspend appeals so that the Rules prohibiting new evidence could be issued is fundamentally unfair.

The Appeal and Audit rules described above have apparently been adopted by the Special Master. However, as stated by the District Court of Minnesota, “It is neither the role of the Special Master nor the court to sit in judgment of the economics of professional football, nor to second guess the wisdom of the bargain the parties struck.” White v. National Football League, 972 F.Supp. 1230 (D. Minn. 1997).

- 3. On December 13, 2017, The Claims Administrator Improperly Issued Some 65 Notices of Preliminary Review Seeking Raw Testing Scores. These Records are not Required to be Provided under the ASA. These Claims Were Well Past the Time Allotted to Determine Their Sufficiency and These Requests Were Issued as a Massive Fishing Expedition.**

As has been repeatedly demonstrated above, the prescribed periods of time under the ASA are being routinely ignored to thwart otherwise legitimate Claims. In yet another violation of the ASA procedures, the Claims Administrator is using another unlawful delay to embark on a massive fishing expedition to find a basis to undermine these and other Claims.

Paragraph 8.4(a) of the ASA provides the Claims Administrator with forty-five (45) days to determine the sufficiency of the required contents and completeness of the Claim. Nevertheless, on December 13, 2017, eight days after the Special Master rendered its findings disqualifying Dr. Hoover and invalidating any Claims Packages that relied on her findings, YLF received approximately 65 Notices of Preliminary Review (NPRs). These NPRs generally sought the raw scores from the neuropsychiatric evaluators used by YLF. The NPRs were served months after the deadline the Claims Administrator had to determine the sufficiency of the contents of each Claim. Some Claims had been pending for nearly seven months.

Moreover, the Claims Administrator and any Interested Parties are only entitled to medical records under the ASA. Raw scores are not medical records. Moreover, in most states, including Florida, raw scores can only be provided directly to a properly licensed neuropsychologist. The Claims Administrator is simply not entitled to these records. Had it been the intent of the parties to require these records, the ASA Exhibits could have specified that these scores be reported along with the detailed T scores that are otherwise required. This is another ultra vires act of the Claims Administrator that is enforcing compliance through the Draconian sanction of Denial unless these records are provided. And, before the proverbial cat is let out of the bag, the Players have no right to appeal this process.

Moreover, had the neuropsychiatric reports been facially non-compliant with the pages of extensive and detailed requirements specified in Exhibit 3 of the ASA, the Claims Administrator

could have requested additional records months before the December 5, 2017, Special Master ruling. This is the other apparent problem with the NPRs. Even if there was a legitimate basis, NPRs and Audits are being used *en masse* to frustrate the Claims process. For instance, in the case of one player, his Claim was filed in May 2017. On August 22, 2017, a Notice of Deficiency was sent well after the 45-day deadline. That Deficiency noted three matters including the MRI report which had already been filed with his original Claim Package. His Response was timely filed. Nevertheless, on January 4, 2018, a Notice of Preliminary Review (NPR) was sent raising the same identical matters raised in the Deficiency. Claimant responded and informed the Claims Administrator these matters had already been submitted. Then, on March 12, 2018, about ten months after his Claim was filed, an Audit was issued asking for routine medical provider and employment information.

One could argue that a series of simple mistakes had been made, the deadlines were unfortunately missed, and these requests were all issued in good faith. However, the Claims Administrator would have to explain why the nearly identical pattern of delay occurred with another player whose claim was filed on May 15, 2017, a Deficiency was issued on August 22, 2017, his NPR asking for the same matters was issued on January 4, 2018 and his Audit was issued on March 4, 2018. The coincidences between the treatment of these claim are either extreme serendipity or a planned process. Unfortunately, because YLF only has a certain number of Claims, it cannot monitor the proceedings from a global perspective. Nevertheless, even from this small representative sampling, it would appear that the combination of Deficiencies, NPRs and Audits, are being used to frustrate the rights of these injured players to due process. By no stretch of the imagination is the process working perfectly.

However, despite the delays that are being afforded, on information and belief, having recognized the utility in having a provider disqualified and disposing of hundreds of Claims regardless of the merits of each individual Claim in one fell swoop, the Claims Administrator is withholding review of a thousand or more 1.5 and 2.0 Claim Packages looking for a pretext to thwart these Claims. That was not the intent of the ASA.

With respect, and on information and belief, it appears there is a systemic bias against 1.5 or 2.0 Claim Packages. According to the February 5, 2018, Monetary Award Claims Report, 1,079 1.5 and 2.0 Claim Packages have been submitted but only 4 of these 1,079 Claims have been paid to players.

Moreover, as evidenced by the absence of any action on the Monetary Awards of the players referenced above, and the failure to make any other award on approximately 141 fully documented Claim packages after months of languishing in Audits or otherwise, YLF has concluded there is a systemic bias against Subclass 1 Claims. Furthermore, YLF has previously spoken with lawyers in California, Texas, Connecticut and Florida who represent many other Subclass 1 Claims and not one of these firms has reported payment of a single claim prior to March 1, 2018. More than a hundred million dollars has been paid to players yet it appears no individually represented player has been paid for a 1.5 or 2.0 claim. As part of their correspondence to the Claims Administrator, YLF has asked how many Subclass 1 Claims have been paid. The Claims Administrator has refused to respond.

One cannot help but feel that the individually retained lawyers: (1) are having their fee contracts challenged; (2) must defend against inappropriate fee liens; and (3) who are not part of the executive committee and are being further frustrated by having the Claims of their players delayed so that their efforts are otherwise chilled.

MEMORANDUM OF LAW

All affected parties must honor the plain language of the settlement agreement not only as to the timeframes, but also as to the submitted claim documents. “It is essential that the parties to class action settlements have complete assurance that a settlement agreement is binding once it is reached.” Ehrheart v. Verizon Wireless, 609 F.3d 590, 596 (3d Cir. 2010). The “obligation” of all affected parties to be bound by a Court-approved settlement agreement “pervades the law.” Pugh v. Super Fresh Food Markets, Inc., 640 F.Supp. 1306, 1307 (E.D.Pa. 1986) (enforcing the settlement agreement in a tort case). To overlook deadlines is a breach. To add requirements for submitting the claims is a breach. “It is well established that a court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement.” Brown v. County of Genesee, 872 F.2d 169, 173 (6th Cir. 1989) (collecting cases). Both the deadlines and the claim-filing requirements must be enforced according to the plain language of the agreement. Moreover, the Claims Administrator should be precluded from any benefit of the raw scores already obtained under the well- recognized law that prohibits the fruit of the poisonous tree.

Based on the plain language of paragraph 8.4(a), these Claimants ask the Court to enforce the 45-day deadline for preliminary review of their claims. Based on the plain language of Article IX and X, Claims that have been Denied should be removed from the Audit track and their Appeals should proceed. Claimants should be provided fifteen days to perfect their Appeals and any responding party should be strictly limited to the record on appeal so that there is no benefit from this extraordinary time out that these interested parties have received. The Third Circuit held that “the settlement agreement is a contract subject to the rules of contract interpretation.” Pennwalt Corp. v. Plough, Inc., 676 F.2d 77, 79 (3d Cir. 1982). Applying Pennsylvania law, the Third Circuit instructs:

Where the intention of the parties is clear, there is no need to resort to extrinsic aids or evidence, instead, the meaning of a clear and unequivocal written contract must be determined by its contents alone. Where language is clear and unambiguous, the focus of interpretation is upon the terms of the agreement as manifestly expressed, rather than as, perhaps, silently intended. Clear contractual terms that are capable of one reasonable interpretation must be given effect without reference to matters outside the contract.

Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc., 247 F.3d 79, 92-93 (3d Cir. 2001), cert. denied, 534 U.S. 1162 (2002).

The deadlines and procedures referenced above must be enforced. While the agreement does not state that time is of the essence, it also makes provision for the deadlines to be extended by express agreement of the parties. No such extension has been granted or amendment has been agreed. In claim after claim, the 45-day deadline for preliminary review has expired without a response. An order for specific performance is the proper remedy to enforce the contractual deadline. Saber v. Finance America Credit Corp., 843 F.2d 697, 702 (3d Cir. 1987); accord, Sotak v. Nitschke, 303 Pa. Super. 361, 374, 449 A.2d 729, 735 (1982) (“[S]pecific performance is an equitable remedy to compel the performance of a contract in the precise terms agreed on, or substantially.”). Otherwise, these contractual rights are meaningless.

Adding unwritten requirements to the claim packages is barred by the settlement agreement. The settlement agreement plainly describes how to submit the claim packages in detail in Exhibit A-1. The unambiguous “minutiae of the parties’ performance and expectations” in the settlement agreement of a class action are enforceable. Colella v. University of Pittsburgh, 569 F.Supp. 2d 525, 531 (W.D.Pa. 2008). Requiring raw scores or the Level 1.5 claimants to provide documents corroborating their traumatic brain injuries before the qualifying diagnosis violates the ASA. With regard to the latter, Section 1(a)(iii) of the Exhibit A-1 makes no mention of a requirement for corroborating documents before the date of the diagnosis, so that

requirement cannot be unilaterally added to the claim procedure. Second, requiring a claimant to provide additional information about unrelated medical conditions, such as diabetes, violates the plain language of the agreement. Exhibit A-1 makes no mention of requiring documents on non-brain-related medical conditions. These unwritten requirements must be waived and otherwise removed from the claim procedure based on the “clear contractual terms” of the settlement agreement. Bohler-Uddeholm America, Inc., 247 F.3d at 92-93.

Again, the Special Master should immediately direct the Claims Administrator to: (1) remove from Audit any Claim that was Denied so the Appellate procedures under Article IX can be completed; (2) strictly construe the Audit requirements and remove any Claim from Audit that does not meet that test; (3) require the Claims Administrator to fully provide information about the number of Claims in Audit, why these Claims are in Audit and any other matters that will provide Audit transparency; and (4) prevent the Claims Administrator for making requirements not embodied in the ASA.

WHEREFORE, Claimants, by and through the undersigned counsel, The Yerrid Law Firm and Neurocognitive Football Lawyers, respectfully request the opportunity to address the matters in this motion as further directed by the Court, as well as other relief that is just and equitable.

Dated: March 30, 2018

Respectfully submitted,

/s/ Ralph L. Gonzalez
C. STEVEN YERRID, ESQ.
RALPH L. GONZALEZ, ESQ.
HEATHER N. BARNES, ESQ.
THE YERRID LAW FIRM
101 E. Kennedy Boulevard, Suite 3910
Tampa, Florida 33602
(813) 222-8222 (telephone)
(813) 222-8224 (telefax)

hbarnes@yerridlaw.com
cjameson@yerridlaw.com
kodell@yerridlaw.com

Florida Bar No. 207594
Florida Bar No. 564140
Florida Bar No. 85522

JIM HOLLIDAY, ESQ.
HOLLIDAY KARATINOS LAW FIRM PLLC
18920 N. Dale Mabry Hwy. Suite 101
Lutz, Florida 33548
(813) 868-1887 (telephone)
(813) 909-8535 (telefax)
jamesholliday@helpinginjuredpeople.com
Florida Bar No. 45284

THOMAS PARNELL, ESQ.
GIBBS & PARNELL, P.A.
722 E. Fletcher Ave.
Tampa, Florida 33612
(813) 975-4444 (telephone)
(813) 975-4445 (telefax)
Florida Bar No. 441988

JEFFREY MURPHY, ESQ.
JEFFREY D. MURPHY, P.A.
511 W. Bay St., Suite 352
Tampa, Florida 33606
(813) 443-5553 (telephone)
(813) 436-5190 (telefax)
Florida Bar No. 860808

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2018, I caused the foregoing Request to be electronically filed with the United States District Court for the Eastern District of Pennsylvania

via the Court's CM/ECF system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

/s/ Ralph L. Gonzalez
RALPH L. GONZALEZ
THE YERRID LAW FIRM

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

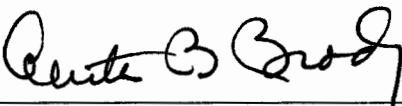
ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 2nd day of April, 2018, after considering Co-Lead Class Counsel's request (ECF No. 9835), it is **ORDERED** that:

- All motions to join the Motion of Class Counsel the Locks Law Firm for Appointment of Administrative Counsel (ECF No. 9786) must be filed **on or before April 3, 2018**.
- Co-Lead Class Counsel may submit a response to the Motion and all related papers **on or before April 13, 2018**.
- The Court will not accept any replies to Co-Lead Class Counsel's response.



ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

O:\ABB 2018\L-Z\NFL Order request to respond to Locks Motion.docx

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Case No. 2:12-md-02323-AB MDL

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of himself and others similarly
situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 14-cv-29-AB

National Football League and NFL Properties,
LLC, successor-in-interest to NFL Properties,
Inc.

Defendants.

NOTICE OF WITHDRAWAL OF JOINDER

Robins Cloud LLP, hereby withdraws its Notice of Joinder in this lawsuit. The Notice of Joinder in Motion by the Locks Law Firm for Appointment of Administrative Class Counsel was filed on March 30, 2018 (ECF No. 9837).

WHEREFORE, this Notice hereby withdraws the Notice of Joinder as filed in the docket as referenced above.

Dated: April 2, 2018

Respectfully submitted,

Attorney Ian Cloud, Robins Cloud, LLP

By: /s/ Ian P. Cloud

Ian P. Cloud
State Bar No. 00783843
Robins Cloud, LLP
2000 West Loop South. 22nd Floor
Houston, TX 77027
Tel: (713) 650-1200
Fax: (713) 650-1400
icloud@robinscloud.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing Notice of Change of Firm Affiliation was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: April 2, 2018

/s/ Ian P. Cloud
Ian P. Cloud

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**NOTICE OF JOINDER BY THE LOCKS LAW FIRM TO THE MOTION
OF CO-LEAD CLASS COUNSEL ANAPOL WEISS TO COMPEL
REIMBURSEMENT TO ALL CLASS COUNSEL FOR CONTRIBUTIONS
TO COMMON BENEFIT EXPENSES
AND TO COMPEL THE ESTABLISHMENT OF THE EDUCATION FUND**

Undersigned Class Counsel the Locks Law Firm respectfully submits this Notice of Joinder adopting, supporting, and joining the motion of co-lead class counsel Anapol Weiss to compel the Claims Administrator to reimburse class counsel out of the Attorneys' Fees QSF fund the monies class counsel contributed to the common benefit expenses (as submitted for

reimbursement) and for the entry of an order establishing the Education Fund per the Settlement Agreement. *See* Document No. 9807.

The basis for this Joinder is as follows:

1. The Locks Law Firm agrees with co-lead class counsel Anapol Weiss that expenses totaling approximately \$5.7 million should be reimbursed to class counsel. The precise figures for reimbursement derive from a Fee Petition filed by co-lead class counsel Seeger Weiss LLP, on Feb. 13, 2017 (ECF No. 7151). A subsequent table that summarizes the expenses and the names of the law firms participating was compiled in Document 7205-1 and filed with the Court on February 27, 2017. That table is attached here as Exhibit A. For clarification purposes, the reimbursement amounts appear in the column labeled Expenses, totaling \$5,682,779.38. Many of these expenses date back to 2012.

2. The Locks Law Firm agrees with Anapol Weiss that the establishment of the Education Fund, as required by the Settlement Agreement, should be expedited and that the Court should intervene to ensure this happens.

For the forgoing reasons, Class Counsel the Locks Law Firm respectfully joins the motion filed by Anapol Weiss to compel payment of submitted expenses to class counsel and to establish the Education Fund in an appropriate and expedited manner.

Respectfully submitted,

/s/ Gene Locks

Gene Locks

David D. Langfitt

LOCKS LAW FIRM

The Curtis Center

Suite 720 East

601 Walnut Street

Philadelphia, PA 19106

Phone: (215) 893-3423

Fax: (215) 893-3444
Email: glocks@lockslaw.com
dlangfitt@lockslaw.com

Exhibit A

NFL Concussion Case CA. No. 2:12-md-2323-AB Attorney Fee and Expense Report
 Compiled from Co-Lead Class Counsel's Fee Petition dated Feb. 13, 2017 (ECF No. 7151)

	Attorney Name	Firm Name	Hours	Fee Amount	Expenses	Total Fees + Expenses
1	Christopher A. Seeger	Seeger Weiss LLP	21,044.06	\$ 18,124,869.10	\$ 1,498,690.99	\$ 19,623,560.09
2	Arnold Levin	Levine Sedran & Berman	5,021.25	\$ 6,031,806.25	\$ 519,893.97	\$ 6,551,700.22
3	Gene Locks	Locks Law Firm	4,243.00	\$ 3,084,500.00	\$ 639,160.00	\$ 3,723,660.00
4	Steven C. Marks	Podhurst Orseck, PA	4,510.80	\$ 3,005,744.50	\$ 771,127.79	\$ 3,776,872.29
5	Dianne M. Nast	NastLaw LLC	1,211.75	\$ 765,060.25	\$ 117,138.64	\$ 882,198.89
6	Sol H. Weiss	Anapol Weiss	4,241.22	\$ 1,857,436.00	\$ 1,031,971.55	\$ 2,889,407.55
7	Garrett D. Blanchfield Jr.	Reinhardt Wendorf & Blanc	23.10	\$ 14,899.50	\$ 1,480.57	\$ 16,380.07
8	William G. Caldes	Spector Roseman Kodroff & Willis	74.40	\$ 51,708.00	\$ 1,460.92	\$ 53,168.92
9	Leonard A. Davis	Herman, Herman & Katz	136.30	\$ 89,660.00	\$ -	\$ 89,660.00
10	James R. Dugan II	The Dugan Law Firm	293.90	\$ 188,340.50	\$ 118,880.16	\$ 307,220.66
11	Daniel C. Girard	Giard Gibbs LLP	373.10	\$ 279,489.00	\$ 8,300.11	\$ 287,789.11
12	Thomas V. Girardi	Girardi Keese	626.80	\$ 472,370.00	\$ 5,509.15	\$ 477,879.15
13	Bruce A. Hagen	Hagen, Roskopf & Earle, LLC	540.80	\$ 324,480.00	\$ 16,998.08	\$ 341,478.08
14	Samuel Issacharoff	Issacharoff/Estlund	801.75	\$ 800,512.50	\$ 7,302.22	\$ 807,814.72
15	Richard Lewis	Hausfeld LLP	1,281.80	\$ 763,917.50	\$ 165,468.47	\$ 929,385.97
16	Jason E. Luckasevic	Goldberg, Persky & White, P.C.	500.60	\$ 262,860.00	\$ 11,823.78	\$ 274,683.78
17	Derriel C. McCorvey	McCorvey Law, LLC	331.30	\$ 198,780.00	\$ 104,155.65	\$ 302,935.65
18	Mike McGlamry	Pope McGlamry	1,274.90	\$ 829,030.00	\$ 125,137.01	\$ 954,167.01
19	Craig R. Mitnick	Mitnick Law Office, LLC	1,198.15	\$ 898,612.50	\$ 83,082.20	\$ 981,694.70
20	David A. Rosen	Rose, Klein & Marias LLP	243.03	\$ 157,969.50	\$ 112,168.64	\$ 270,138.14
21	Frederick Schnek	Casey, Gerry, Schenk LLP	417.40	\$ 333,920.00	\$ 86,651.72	\$ 420,571.72
22	Anthony Tarricone	Kreindler & Kreindler LLP	1,573.00	\$ 1,258,400.00	\$ 120,832.04	\$ 1,379,232.04
23	Charles S. Zimmerman	Zimmerman Reed LLP	1,106.50	\$ 885,907.25	\$ 135,545.72	\$ 1,021,452.97
	Total		51,068.91	\$40,680,272.35	\$5,682,779.38	\$46,363,051.73

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice was served on this date via the Electronic Filing System on all counsel of record in Case No. 1:12-md-02323-AB, MDL No. 2323.

DATE: April 3, 2018

By: /s/Gene Locks
Gene Locks, Class Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
RETIRED PLAYERS' CONCUSSION
INJURY LITIGATION

Case No. 2:12-md-02323-AB-MDL

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
on behalf of himself and others similarly
situated,

Plaintiffs,

CIVIL ACTION NO. 14-cv-29-AB

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.

Defendants.

APPLIES TO ALL CASES

NOTICE OF WITHDRAWAL OF JOINDER IN LOCKS' MOTION

Lieff Cabraser Heimann & Bernstein, LLP, hereby withdraws its Joinder in the Motion by the Locks Law Firm for Appointment of Administrative Class Counsel was filed on March 30, 2018 (ECF No. 9837).

WHEREFORE, this Notice hereby withdraws the Notice of Joinder as filed in the docket as referenced above.

Dated: April 3, 2018

Respectfully Submitted,

By: /s/ Wendy R. Fleishman

Wendy R. Fleishman

Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street
8th Floor
New York, New York 10013
Telephone: (212) 355-9000
Facsimile: (212) 355-9592
wfleishman@lchb.com

Kenneth Byrd
Andrew R. Kaufman
Lieff Cabraser Heimann & Bernstein, LLP
222 2nd Avenue South
Suite 1640
Nashville, TN 37201
Telephone: (615) 313-9000
Facsimile: (615) 313-9965
kbyrd@lchb.com
akaufman@lchb.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing document was served electronically via the Court's electronic filing system on the 3rd day of April, 2018, upon all counsel of record.

Dated: April 3, 2018

/s/ Wendy R. Fleishman
Wendy R. Fleishman

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**CO-LEAD CLASS COUNSEL'S RESPONSE TO MOTION TO JOIN
ANAPOL WEISS' REQUEST FOR A HEARING TO SEEK COURT
INTERVENTION ON THE PROCESSING OF CERTAIN CLAIMS**

Co-Lead Class Counsel respectfully submits this brief response to the request of the Mitnick Law Office (ECF No. 9785) to join the motion of Anapol Weiss, seeking this Court's intervention on the processing of certain claims arising from the Settlement (ECF No. 9784). Just one day after filing its motion, Anapol Weiss withdrew it as moot, given its receipt of a monetary award determination issued to the client in question (ECF No. 9788). The withdrawal of the underlying motion thereby renders the piggyback filing itself moot. *Cf. Rudolph v. Safari Club Int'l*, No. 12CV1710, 2013 WL 1181897, at *8 n.6 (W.D. Pa. Mar. 20, 2013) (where underlying argument for dismissal to which certain defendants sought to join became moot, request for joinder to that argument became moot).

Accordingly, the Court should deny the joinder request without prejudice as moot. If, for any reason, the Court should conclude that the Mitnick Law Office's joinder request is not moot, Co-Lead Class Counsel respectfully requests that he be afforded 14 days from any Order to that effect within which to respond to the Mitnick Law Office's filing.

Date: April 3, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
cseeger@seegerweiss.com
Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on April 3, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

National Football League and NFL
Properties LLC, successor-in-interest to
NFL Properties, Inc.,

Defendants.

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

No. 2:12-md-02323 (AB)

MDL No. 2323

Hon. Anita B. Brody

**MOTION TO JOIN THE MOTION OF CLASS COUNSEL
THE LOCKS LAW FIRM FOR APPOINTMENT OF ADMINISTRATIVE COUNSEL**

On March 20, 2018, The Locks Law Firm filed a Motion (Doc. No. 9786) seeking appointment of administrative class counsel to assist in resolving failures with the claims process (the "Motion"). The undersigned, on behalf of Hagen Rosskopf LLC (formerly known as Hagen, Rosskopf & Earle, LLC), joins in the request for appointment of administrative class counsel and for a hearing to correct the multitude of failures in the Settlement administration.

The undersigned is Co-Counsel with Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. ("PMKM") on behalf of more than 400 players in the above referenced matter. The number of clients we represented had been over 500 before multiple incidents of clients being poached by other lawyers, or simply firing our firms, in an effort to avoid paying attorney's fees. This is not

a problem unique to our firms in the present case, as it has been a common experience of lawyers representing a large number of former NFL players, and it's the direct by-product of the lack of leadership from Co-Lead Counsel Chris Seeger.

The undersigned has been working on this matter since a time prior to the hearings that established the current MDL. I've worked closely with Co-Lead Counsel, the Executive Committee and the Steering Committee, primarily through my work as a member of the Communications and Public Relations Committee. I've also worked closely with the many former NFL players that I represent, speaking with them constantly over the last 6.5 years since I first started representing them in their claims against the NFL. To put it mildly, I am deeply invested in the success of the Settlement of the case, representing more than 400 registered claimants. Along with PMKM, we have filed approximately 30 pre-effective date claims.

The Settlement as currently implemented has structural problems. Players and their counsel have expressed in specific detail that the NFL has tried to convert and modify the Settlement into a secret litigation device with which the NFL delays and defeats meritorious claims. This is set forth in The Locks Motion and in various joinders. The undersigned has had similar experience.

All of this has occurred while Co-Lead Counsel Chris Seeger has exclusively represented the Class in Settlement implementation, because he has cordoned off from implementation other class counsel, including The Locks Law Firm, PMKM and others. This approach appears to have actively harmed the Class of former players. This may be explained by the fact that Seeger Weiss's interests are not aligned with those of the Class.

First, Seeger Weiss represents virtually no players and never has. As a firm, it does not understand the claims process from the players' standpoint. Also, it seeks to be paid 5% of EVERY player award, which is not in the players' interests. Since it has kept all of the other class counsel out of the implementation process, its design appears to be to obtain that 5% for itself only, even though there are many sources other than claimant awards with which to pay class counsel for implementation work.

Second, Seeger Weiss does not seem to understand the problems that face the individual members of the Class. On one hand, Seeger Weiss acknowledges in quotations to the Washington Post that the NFL decided long ago to litigate every submitted claim once the Court uncapped the Settlement. Assuming that Mr. Seeger is not going to take a page from the President's playbook and claim that the Washington Post story is "Fake News," then that statement reflects a substantial acknowledgment of a serious implementation problem. But on the other hand, Mr. Seeger has also said that everything in the Settlement is fine, in fact better than expected. It is difficult to square one statement with the other, particularly given the reported problems in the Locks Motion and joinders and the fact that in excess of 95% of dementia claims have been denied, delayed, or in audit. Mr. Seeger is seemingly tone deaf to the plight of the Class members, particularly those who have Qualifying Diagnoses, that he ostensibly represents.

To protect Class interests, the undersigned respectfully requests that the Court grant The Locks Law Firm's Motion to ensure that implementation counsel for the players have interests directly aligned with the Class. We also respectfully request a hearing as soon as possible to allow the Court to receive evidence on the ways in which implementation has failed the Class and solutions to the specific problems identified. Players and their families are suffering, and this issue

needs to be addressed now, not later. Respectfully, the undersigned believes that this is in the best interests of the Class, the Settlement and the Court's structure currently in place.

This the 3rd day of April, 2018.

Hagen Rosskopf LLC

/s/ Bruce A. Hagen
Bruce A. Hagen
Georgia State Bar No. 316678

119 N. McDonough Street
Decatur, GA 30030
(404) 522-7553
(404) 522-7744 – fax
Bruce@Hagen-Law.com

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2018, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Bruce A. Hagen

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE)	No. 2:12-md-02323-AB
PLAYERS' CONCUSSION INJURY)	MDL No. 2323
LITIGATION)	
)	
Kevin Turner and Shawn Wooden,)	
on behalf of themselves and others)	Hon. Anita B. Brody
similarly situated,)	Civ. Action No. 14-00029-
)	
)	
Plaintiffs,)	
)	
v.)	
)	
National Football League and)	
NFL Properties, LLC,)	
Successor-in-interest to)	
NFL Properties, Inc.,)	
)	
Defendants.)	
)	
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	
_____)	

**JOINDER OF SMITH STALLWORTH PA
IN MOTION BY THE LOCKS LAW FIRM FOR
APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

On March 20, 2018, The Locks Law Firm filed a Motion seeking the appointment of administrative class counsel (Doc. 9786). SMITH AND STALLWORTH PA joins in The Locks Law Firm's motion.

The firm has over 50 pre-effective date claims. In order to ensure the Settlement Agreement is appropriately implemented and interpreted the appointment of administrative class counsel is necessary at this time. Given the volume of players of represented, Locks Law Firm is

best situated to serve as administrative class counsel. Further, this firm, as well as others, anticipate handling NFL claims for years into the future. The class will be best served having an administrative counsel actively dealing with pending claims now and in the future.

WHEREFORE, Smith and Stallworth respectfully requests that the Court appoint The Locks Law Firm and/or another firm as Administrative Class Counsel. Wherefore the Firm request a hearing on the above.

DATED: April 3, 2018.

Respectfully submitted,
Mark Stallworth, Esquire

/s/ Mark Stallworth
Smith & Stallworth, P.A.
201 E. Kennedy Blvd.
Suite 1475
Tampa, Florida 33602
Phone: (813) 223-7799
Fax: (813) 223-7711

danger of failing in its execution. Appointing Administrative Class Counsel is necessary to provide a structural safeguard to ensure the terms of the Amended Settlement Agreement are being followed and adhered to especially since Seeger Weiss has failed miserably in protecting the rights of the players. Seeger Weiss has allowed the NFL to re-litigate the class action through the settlement process and insist on extreme standards that are not part of the settlement agreement as a way to temper and delay the number and size of awards given to the players. Simultaneously, Seeger Weiss has represented to this Court and the media how smoothly the settlement program is progressing while knowing full well that not a single plaintiffs' counsel shares their view. In fact, the overwhelming view by plaintiffs' counsel is that the program has been a colossal failure fraught with intentional roadblocks and delays that has plaintiffs' counsel and its players up in arms.

Berkowitz and Hanna LLC concurs with the list set forth in the filed Memorandum of The Locks Law Firm (ECF. 9786) at pages 6-7, since we have faced similar obstacles throughout the claims process. Berkowitz and Hanna LLC represents a substantial number of Retired NFL player and have already filed more than 80 pre-effective qualifying diagnoses claims for monetary awards and numerous post-effective qualifying diagnoses claims made by MAF and BAP providers for monetary awards. Of the 100 claims we have submitted, one claim has been approved, and more than half of our claims have been delayed due to inexplicable audits, notices requesting additional documents and/or denials. The implementation of the claims process has revealed that there are new requirements and

amendments to the plain language of the Amended Settlement Agreement that parties were never made aware of and the terms of the Amended Settlement Agreement are not being applied properly and in good faith.

For instance, the “audit procedures” used by BrownGreer are not being utilized in accordance with terms of the Amended Settlement Agreement and are unfairly delaying the processing of claims. When we contacted BrownGreer to discuss why almost every claim we submitted for a monetary award was selected for an audit, we were told by the Audit Review Panel that there are guidelines that they follow when selecting claims for audits. When we asked what these guidelines were, we were told by the Audit Review Panel that the guidelines are confidential. This is extremely troubling since the claims commission is supposed to be independent and transparent; not an agent the NFL. The implementation of the audit process shows that the NFL and BrownGreer have deviated from the Amended Settlement Agreement and created new amendments and rules without knowledge and/or consent of Class Co-Counsel, Sub-Class Counsel, and the players and in contravention of the terms of the Amendment Settlement Agreement. The new “amendments” to the Amendment Settlement Agreement and the lack of transparency have caused unnecessary and inexcusable delays in the claims process.

Berkowitz and Hanna LLC expressed concerns over the claims process to Co-Lead Class Counsel Seeger Weiss beginning over a year ago but our requests have fallen on deaf ears. When it became obvious early in the claims process that the settlement agreement was

not being adhered to by the Claims Commission, we contacted Seeger Weiss and requested that they hold a meeting for plaintiffs' counsel so we could share with Seeger Weiss the many problems and delays counsel throughout the country were facing during the claims process. However, Chris Seeger of Seeger Weiss failed and/or refused to meet with plaintiffs' counsel that are representing thousands of players. Instead, despite his knowledge of the universal unhappiness of how the settlement program is progressing, Attorney Seeger continues to represent to the Court and the media how successful and smoothly the settlement program is progressing. Such disingenuous statements are causing grave concerns among players and plaintiffs' counsel regarding Seeger Weiss' efforts to properly advocate on behalf of the players. Oppositely, The Locks Law Firm, who, like our firm, represents a substantial number of players and is much more familiar than Chris Seeger (who represents very few players) regarding the unfairness that the settlement program has brought upon the players and is much more responsive to plaintiffs' counsel when contacted regarding the unfairness of the execution of the settlement program. Therefore, it is clear that The Locks Law Firm is in a much better position than Seeger Weiss to advocate on behalf of the players and should be appointed Administrative Class Counsel to oversee the claims process and ensure that the terms of the Amended Settlement Agreement are being fairly applied.

As stated above, Seeger Weiss has portrayed to the media that the claims process has been running smoothly. However, the program is in danger of imploding which makes it quite troubling that Seeger Weiss would represent to the Court and the media the complete

opposite. It was represented to the Retired NFL Players that the program would be a fair, simple and streamlined claims process. Unfortunately, these promises have been broken as the claims process has been filled with inexcusable delays, secretive guidelines and new requirements that are not in accordance with the terms of the Amended Settlement Agreement. The class will be better served with an Administrative Class Counsel actively who will stand up for the rights of the players and make sure that the original settlement agreement is adhered to so that the players can receive the compensation they are so rightfully entitled to.

Undersigned counsel respectfully requests that the Court appoint The Locks Law Firm as Administrative Class Counsel and hold a hearing to address the processing of claims process and the failures, among other things, identified in The Locks Law Firm Memorandum.

Dated: April 3, 2018.

Respectfully Submitted By:

THE PETITIONER,

/s/ Russell J. Berkowitz, Esq. _____

Russell J. Berkowitz, Esq.

Kelly E. Ferraro, Esq.

Berkowitz and Hanna LLC

733 Summer Street, 2nd Floor

Stamford, Connecticut 06901

Tel.: (203) 324-7909; Fax: (203) 324-5067

Connecticut Bar No. 438109

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Notice of Attorney's Lien to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for the CM/ECF in the litigation.

Dated: April 3, 2018

THE PETITIONER,

/s/ Russell J. Berkowitz, Esq.

Russell J. Berkowitz, Esq.

Kelly E. Ferraro, Esq.

Berkowitz and Hanna LLC

733 Summer Street, 2nd Floor

Stamford, Connecticut 06901

Tel.: (203) 324-7909; Fax: (203) 324-5067

Connecticut Bar No. 438109

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION	§ § § § § § § § § §	No. 12-md-2323 (AB) MDL No. 2323
THIS DOCUMENT RELATES TO: ALL ACTIONS	§ §	

**Movants' Motion to Join in the Motion of Class Counsel,
the Locks Law Firm, for Appointment of
Administrative Class Counsel (ECF 9786)**

Come now, The Alexander Objectors and Lubel Voyles, LLP (hereinafter "Movants") and file this their joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Counsel (ECF 9786) as follows:

1. The Locks Law Firm (LLF) has filed a Motion for Appointment of Administrative Counsel. *See* ECF 9786.
2. The Court has ordered that all motions to join the LLF Motion for Appointment of Administrative Counsel must be filed on or before April 3, 2018. *See* ECF 9845.
3. In accordance with the Court's Order, Movants file this their Motion to Join the Motion for Appointment of Administrative Counsel.
4. Without the structural protection proposed by LLF, the Settlement Agreement is in danger of failing in its implementation.
5. LLF's request to serve as Administrative Class Counsel presents an opportunity for the Court to provide such structural protection for all of the Class Members.
6. Movants rely upon and incorporate by reference their Memorandum in Support of their Joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Class Counsel contemporaneously filed.

Date: April 3, 2018

Respectfully Submitted,

/s/ Lance H. Lubel

Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES, PLLC
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman
Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (832) 977-9136
Facsimile: (832) 714-0314
Email: ccanady@canadylawfirm.com

Attorneys for Melvin Aldridge, Trevor Cobb, Jerry W. Davis, Michael Dumas, Corris Ervin, Robert Evans, Anthony Guillory, Wilmer K. Hicks, Jr., Richard Johnson, Ryan McCoy, Emanuel McNeil, Robert Pollard, Frankie Smith, Tyrone Smith, James A. Young Sr., and Baldwin Malcom Frank

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on April 3, 2018.

/s/ Lance H. Lubel

Lance H. Lubel

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS’ CONCUSSION LITIGATION	§ § § § § § § § § §	 No. 12-md-2323 (AB) MDL No. 2323
THIS DOCUMENT RELATES TO: ALL ACTIONS	§ § §	

**Memorandum in Support of
Movants’ Joinder in the Motion of Class Counsel,
the Locks Law Firm, for Appointment of
Administrative Class Counsel (ECF 9786)**

Come now, The Alexander Objectors and Lubel Voyles, LLP (hereinafter “Movants”) and file this their memorandum in support of joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Counsel (ECF 9786) as follows:

A. Introduction

1. A few days ago, on March 30, a headline in the Boston Globe read: “Billion-dollar NFL Concussion Settlement on the ‘Brink of Collapse.’”
2. The headline is dramatic. Nonetheless, it is a headline founded upon facts. The fact is: The settlement implementation to date represents a fundamental failure in the exchange of promises embodied in the plain language of the Settlement Agreement that this Court found to be a fair substitute to trial by jury.
3. In less dramatic tone, but nonetheless urgent, the Locks Law Firm (“LLF”) amply outlines that “the Settlement Agreement . . . is in danger of failing in its execution.” *See* ECF 9786, p. 1. LLF, which is heavily invested in the success of this Settlement, wants to save the Settlement from its current implementation derailment and, therefore, has asked this Court to appoint LLF as Administrative Class Counsel. Movants join the request.

B. The Settlement is off the tracks

4. In a prior filing with the Court (ECF 9588), Movants illustrated that the current claims administration falls woefully short of the forecasts the NFL presented to the Court in the largest compensable settlement categories: Alzheimer's; Level 2 neurocognitive impairment; and Level 1.5 neurocognitive impairment. According to Co-Lead Class Counsel's filings, these settlement categories represent 97% of the total participants (registrants) in the settlement. Thus, the objective claims-administration data shows the Settlement has suffered an enormous derailment:

Category (% incidence such category represents of the Whole, <i>see</i> ECF 6423-21, (Ex. JJ, p. 5)	NFL Year 1 Forecasted Payments (ECF 6168 Ex. F)	Actual Year 1 Payments (ECF 9571, Ex. A, p. 7 as of January, 2018)
Alzheimer's (48% of all class members)	153 Claims, \$70.655 million	25 Claims, \$11.59 million
Level 2 (49% of all class members)	111 Claims, \$38.64 million	1 Claim, \$1.5 million
Level 1.5 (0% as all assumed in Level 2)	319 Claims, 33.64 million	3 Claims, 1.5 million
Total Claims	584 Claims forecasted to be paid within the first year	Less than 30 actually paid

5. Yesterday's April 2, 2018 update on the NFL Concussion Settlement website reveals *the trajectory is downward*:

- Of the 301 Alzheimer's claims submitted, 55 have been paid;
- Of the 477 Level 2 claims submitted, 2 have been paid;
- Of the 648 Level 1.5 claims submitted, 4 have been paid;
- Of the 1,737 total claims in all categories that have been submitted, 156 or 9% have been paid;
- Of those same 1,737 total claims, 527 are currently held in audit.

See NFL Concussion Website, Claims Report, Table 1 (Location of All Monetary Award Claims).

6. Did the NFL mislead the Court? Did the NFL mislead Co-Lead Class Counsel? This Settlement is not merely about concussions leading to ALS or Parkinson's. It is Settlement about paying claims for the signature disease of football – neurodegenerative disease

caused by head injury in football based on the clinical symptoms the disease presents. The NFL and Co-Lead Class Counsel persuaded the vast majority of Class Members to participate in this settlement upon the representation that, balancing the risks of litigating (which would include proving causation and damages by a preponderance of the evidence) against the certainties of a settlement, a settlement would be better for all Class Members. Yet, under the settlement, 97% of the Former NFL Players in the Settlement face a burden constructed by the NFL more akin to a beyond a reasonable doubt burden to obtain a settlement award. And, the NFL and the Appeals Advisory Panel (AAP) have injected causation into the claims review process, which is a direct violation of the Settlement and defeats the *quid pro quo* of Settlement.

7. The best evidence that the Settlement implementation is not working is the fact that an Alzheimer's claim featured in the settlement fairness hearing has not yet been approved. Specifically, the Mitnick Law Office recently pointed out that Co-Lead Class Counsel Seeger advertised the "fairness" of the Settlement using the Alzheimer's diagnosis of one of Mitnick's client. Yet, that client's April, 2017 claim remains unpaid as it first faced a challenge and now faces an audit. *See* ECF 9785, pp. 2-3, Motion to Join Co-Lead Counsel Anapol Weiss Request for a Hearing to Seek Court Intervention on the Processing of Certain Claims, filed by The Mitnick Law Office.

8. The Settlement implementation is not even working for Class Counsel all of whom, other than Co-Lead Class Counsel Seeger, find their claims stuck in a claims administration which the Anapol Weiss firm describes as a "thicket of privately litigated, changing standards for claim packages, unpredictable and changing standards of review, that is not what the Settlement Agreement promised retired players." (ECF 9784¹, Motion of Co-Lead Class Counsel Anapol Weiss for a Hearing to Seek Court Intervention on the Processing of Certain Claims, p. 8).

9. In addition to the specific delays experienced in these categories, all Class Members face unchecked disparate treatment. Specifically, as the Court knows, the Settlement

¹ The Motion was subsequently withdrawn when the claim at issue was paid the day after the filing. *See* ECF 9788.

assigns members of the AAP the responsibility of reviewing certain pre-effective date claims supported by non-Settlement-qualified physicians. *See* Settlement Agreement, 6.4. Yet, there is no established formula for assuring consistency in the rulings of the AAP members. If the Claims Administrator is tracking the AAP rulings for consistency, that information is not publicly available. The Claims Administrator should be required to disclose non-confidential data regarding the rulings to ensure that Class Members are not being treated differently depending upon which AAP receives their claim.

10. Similarly, each claim, each appeal is being administratively adjudicated in complete secrecy. There is no doubt that each claimant is entitled to confidentiality. However, the NFL appeals and the adjudication of those appeals is analogous to blind *stare decisis*. The Class Members claims are being measured against an unpublished benchmark.² Neither the NFL, the Claims Administrator, nor the putative spokesperson for Class Members, Co-Lead Class Counsel Seeger will even debate the obvious administrative economy of generically revealing the medical rulings or contract-interpretation rulings that apply or *should apply* equally to all Class Members. This secrecy, this perceived *ad hoc* handling of settlement administration strips the processing of Class Member confidence.

11. The Settlement, as implemented, bears neither the actual nor the perceived benefit of the bargain in its first year. Specifically, this Court approved the Settlement Agreement in this case applying the *Girsh* factors³ and, upon balancing the risks and benefits to the

² To date, there has been a single published appellate decision arising from the Settlement interpretation. *See* ECF 9754, Settlement Implementation Determination – the Settlement Agreement Compensates Class Members for Head Injuries Suffered While Playing in the National Football League. We know, however, that there have been at least twenty appeals: 12 by Class Member, 8 by the NFL, 0 by Co-Lead Class Counsel. *See* ECF 8881, p. 3-4. Co-Lead Class Counsel did not even file a response to all of the NFL appeals. *Id.*

³ In *Girsh v. Jepsen*, the Third Circuit noted nine factors to be considered when determining the fairness of a proposed settlement: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. 521 F.2d 153, 157 (3d Cir.1975) (internal quotation marks and ellipses omitted).

parties, found the Settlement Agreement to be fair. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 388–96 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir.1975)). The Third Circuit echoed the analysis of this Court. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 821 F.2d 410, 437 (3d Cir. 2016).

12. As implemented, however, a retroactive glance at the *Girsh* factors shows that only the NFL has minimized its risk by settlement. Unilateral burdens imposed on the Class via NFL manipulation show that the NFL has essentially entered into a high/low settlement agreement where every claimant *still* has a heightened burden to establish causation and damages to the NFL's satisfaction.

13. If this track record is extended to the life of the Settlement Agreement, it will be an abject failure.

C. Co-Lead Class Counsel Seeger has no incentive to advocate for the Class Members.

14. As Movants previously illustrated in filings with the Court, Co-Lead Class Counsel Seeger (a) has virtually no claimants or clients and, thus no natural alignment of interest with the Class and (b) has adopted a position on fees that places it in a conflict with the Class Members' best interests.

15. Co-Lead Class Counsel Seeger's contradictory position on fees shows the overreach to the detriment of Class Members.

Co-Lead Class Counsel wants a <u>percentage bonus</u> , claiming success in registering Former NFL Players as Class Members; Co-Lead Class Counsel Seeger vigorously opposes waiting to assess success of the Settlement on actual Class Member awards. <i>See</i> ECF 9552-1, page 2.	Co-Lead Class Counsel wants a <u>percentage surcharge</u> (5% set aside) on every monetary award for post-settlement litigation of NFL contests on monetary awards and appeals that have resulted in "many disputed issues between the Settling Parties." Also, ECF 9552, paragraphs 5-7
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

16. The contradictory positions become all the more suspect when, first, Co-Lead Class Counsel Seeger asked the Court to designate Co-Lead Class Counsel Seeger, itself, as the authority to divide the common benefit fee sought between counsel it believed were entitled

to such a fee. Then, Co-Lead Class Counsel Seeger allocated the vast majority of such common benefit fees to itself. Seeger Weiss is, according to Seeger Weiss, primarily responsible for the Settlement Agreement.

17. Co-Lead Counsel Seeger thus faces an implementation dilemma. In order to justify the performance bonus sought, it cannot concede that there are problems in the implementation that were foreseeable. Stated differently, Seeger Weiss cannot concede that there are problems in implementation because that concession would undercut not only the size of the common benefit performance bonus, but also the Seeger Weiss application for the overwhelming and historic portion of that bonus. At this point, Co-Lead Class Counsel Seeger is most literally attempting to profit from its own mistakes. In the interim, Co-Lead Class Counsel must pretend that all is well with the Settlement despite all evidence to the contrary.

18. LLF's request to serve as Administrative Class Counsel presents a stark contrast to Co-Lead Class Counsel Seeger. It is true that LLF has also served as class counsel. Unlike LLF, however, Co-Lead Counsel Seeger does not have the countervailing duty and incentive to individual clients. Seeger has no more than a handful of clients currently participating in the claims administration process. LLF, with more than 1,000 individual clients, is fully invested in the actual success of this settlement; not the perceived or straw-man success through mere registrants.

***D. The Other 97% of the Former NFL Players Need a Voice
with an Incentive to Get Claims Paid***

19. Telling in LLF's pleadings is the unequivocal reference to LLF's continuing fiduciary obligation to all class members as the thrust of its need to become Administrative Class Counsel. Stated differently, LLF's motion shows that it is in an untenable position - owing a duty to all Class Members but presently hindered in the ability to discharge that duty because Seeger Weiss has refused to allow LLF to become directly involved. See ECF 9786, Exhibit H. Evidently, the other class counsel Podurst Orseck and Anapol Weiss, owing the same continuing fiduciary duty, have also been excluded from the

process.

20. LLF didn't rush to the Court for intervention. Instead, LLF first attempted to present its concerns to Co-Lead Class Counsel Seeger and then to BrownGreer. *See* ECF 9786, Exhibit H, I. LLF identified a number of “systemic problems” in the settlement claims administration – problems detrimental to Class Members – *including but not limited to*:

- (1) unilateral Settlement amendment – the pre-effective date corroborating affidavit;
- (2) unilateral Settlement amendment – applying strict BAP criteria to all pre-effective date claims, instead of the “generally equivalent” standard under Settlement section 6.4(b);
- (3) unilateral Settlement amendment - strict construction of the section 8.2 and 8.3 “signature” provisions to defeat the expectations of the settling parties;
- (4) usurpation of AAP discretion – NFL Counsel and Co-Lead Class Counsel Seeger forbidding “downgrading of a claim” by the AAP;
- (5) systemic issues – the NFL is litigating through the administrator, using the administrator to conduct discovery; using administrator audits as super appeals; and “ordering” raw data compared to its own litigation actuarial data to suggest fraud or the lack of good faith of neuropsychological work.

See ECF 9786, Exhibit H.

21. LLF's efforts to do right by Class Members, like the numerous efforts of Movants, has meet with silence from Co-Lead Class Counsel Seeger. Co-Lead Class Counsel Seeger ignores substantive inquiries. The consequence is that Co-Lead Class Counsel Seeger has ejected all other Class Counsel from the administration and implementation process.

22. Similarly, over the past six months, Co-Lead Class Counsel Seeger has refused to respond to the most basic request for information about settlement administration and implementation from Movant Lubel Voyles. *See* Exhibit A, September 20, 2017 email requesting updated status report for the preceding three months of claims; Exhibit B, October 19, 2107 email follow up requested status for the preceding four months of claims; Exhibit C, February 19, 2018 email requesting non-confidential information regarding Special Master or Claims Administrator interpretation of the Settlement terms and appeals

Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES, PLLC
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (832) 977-9136
Facsimile: (832) 714-0314
Email: ccanady@canadylawfirm.com

Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman
Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

Attorneys for Melvin Aldridge, Trevor Cobb, Jerry W. Davis, Michael Dumas, Corris Ervin, Robert Evans, Anthony Guillory, Wilmer K. Hicks, Jr., Richard Johnson, Ryan McCoy, Emanuel McNeil, Robert Pollard, Frankie Smith, Tyrone Smith, James A. Young Sr., and Baldwin Malcom Frank

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on April 3, 2018.

/s/ Lance H. Lubel
Lance H. Lubel

Lance Lubel

From: Lance Lubel
Sent: Wednesday, September 20, 2017 3:58 PM
To: cseeger@seegerweiss.com; 'sweiss@anapolweiss.com'; 'smarks@podhurst.com'; 'glocks@lockslaw.com'
Cc: Lance Lubel
Subject: NFL concussion

Counsel:

On or about June 15, Class Counsel filed a status report with information from the Claims administrator. It would be helpful if you filed an updated Status Report since it has been over 3 months since the last one. Please ask the Claims Administrator to include the following information:

1. Number of current claims filed for monetary awards;
2. Current Number of approved claims;
3. Breakdown of claims filed for each qualifying diagnoses under the settlement;
4. Breakdown of the number claims approved for each qualifying diagnoses;
5. Breakdown by law firm of approved claims to date;
6. The number of BAP exams completed;
7. The number of BAP exams scheduled to date;
8. The number of BAP evaluations that have resulted in approved monetary award claims;
9. The total number of monetary award claims made by claimants not represented by counsel and out of those the total number approved for payment broken down by the claimed qualified diagnoses;
10. The number of audits requested by the NFL parties, class counsel, and the results for each;
11. The number and types of claims determined to be eligible for a monetary award by the claims administrator but waiting for feedback from the AAP. Please include the length of time between determination of eligibility and determination from the AAP.

I look forward to hearing back from you. Hope you are doing well.

Lance

Lance Lubel

From: Lance Lubel
Sent: Thursday, October 19, 2017 4:41 PM
To: 'cseeger@seegerweiss.com'; 'sweiss@anapolweiss.com'; 'smarks@podhurst.com'; 'glocks@lockslaw.com'
Subject: RE: NFL concussion

Chris and Sol:

See below. Why haven't you filed an updated status report as it has now been over 4 months? What is the status?

Lance

From: Lance Lubel
Sent: Wednesday, September 20, 2017 3:58 PM
To: cseeger@seegerweiss.com; 'sweiss@anapolweiss.com' <sweiss@anapolweiss.com>; 'smarks@podhurst.com' <smarks@podhurst.com>; 'glocks@lockslaw.com' <glocks@lockslaw.com>
Cc: Lance Lubel <Lance@lubelvoyles.com>
Subject: NFL concussion

Counsel:

On or about June 15, Class Counsel filed a status report with information from the Claims administrator. It would be helpful if you filed an updated Status Report since it has been over 3 months since the last one. Please ask the Claims Administrator to include the following information:

1. Number of current claims filed for monetary awards;
2. Current Number of approved claims;
3. Breakdown of claims filed for each qualifying diagnoses under the settlement;
4. Breakdown of the number claims approved for each qualifying diagnoses;
5. Breakdown by law firm of approved claims to date;
6. The number of BAP exams completed;
7. The number of BAP exams scheduled to date;
8. The number of BAP evaluations that have resulted in approved monetary award claims;
9. The total number of monetary award claims made by claimants not represented by counsel and out of those the total number approved for payment broken down by the claimed qualified diagnoses;
10. The number of audits requested by the NFL parties, class counsel, and the results for each;
11. The number and types of claims determined to be eligible for a monetary award by the claims administrator but

waiting for feedback from the AAP. Please include the length of time between determination of eligibility and determination from the AAP.

I look forward to hearing back from you. Hope you are doing well.

Lance

Lance Lubel

From: Lance Lubel
Sent: Monday, February 19, 2018 11:46 AM
To: 'cseeger@seegerweiss.com'; 'sweiss@anapolweiss.com'; 'smarks@podhurst.com'; 'glocks@lockslaw.com'
Subject: RE: NFL concussion

Counsel:

The number of paid claims in year 1, especially for Alzheimer's, Level 2 and Level 1.5 when compared to what was forecasted by NFL indicate something is either terribly wrong with the settlement or the claims process or both. The paid level 1.5 and level 2 claims were less than 1% of the forecast supplied to the Court and part of the basis of the bargain. Your recent filings seems to blame the NFL. It is almost impossible to know what issues you are raising with the court, special master or claims administrator on behalf of the claimants. There is no transparency to it at all and your filings suggest substantial disagreement or disharmony between your firms. Please advise of the following:

1. Can you please share with me your correspondence and communications with the Court, special master and claims administrator with regard to interpretation of the settlement agreement and issues with the claims process as these are not privileged matters?
2. How are you dividing up the responsibilities between your firms in dealing with No. 1 above?
3. Are each of you having representatives present in person or by phone when discussing these issues with the decision maker(s)?
4. Has the NFL advised the Court how or why they were over 95% wrong on its forecast to the court and the class members to approve the settlement?
5. How are you assuring there is not disparate treatment in the claims administration process especially since there are 3 AAP members?
6. How do we learn about decisions coming out of the appeals including what positions are being taken by the NFL and class counsel in order to place our own clients claims in the best possible light given the precedence that is being created?

I look forward to your prompt response.

From: Lance Lubel
Sent: Thursday, October 19, 2017 4:41 PM
To: 'cseeger@seegerweiss.com' <cseeger@seegerweiss.com>; 'sweiss@anapolweiss.com' <sweiss@anapolweiss.com>; 'smarks@podhurst.com' <smarks@podhurst.com>; 'glocks@lockslaw.com' <glocks@lockslaw.com>
Subject: RE: NFL concussion

Chris and Sol:

See below. Why haven't you filed an updated status report as it has now been over 4 months? What is the status?

Lance

From: Lance Lubel
Sent: Wednesday, September 20, 2017 3:58 PM
To: cseeger@seegerweiss.com; 'sweiss@anapolweiss.com' <sweiss@anapolweiss.com>; 'smarks@podhurst.com' <smarks@podhurst.com>; 'glocks@lockslaw.com' <glocks@lockslaw.com>
Cc: Lance Lubel <Lance@lubelvoyles.com>
Subject: NFL concussion

Counsel:

On or about June 15, Class Counsel filed a status report with information from the Claims administrator. It would be helpful if you filed an updated Status Report since it has been over 3 months since the last one. Please ask the Claims Administrator to include the following information:

1. Number of current claims filed for monetary awards;
2. Current Number of approved claims;
3. Breakdown of claims filed for each qualifying diagnoses under the settlement;
4. Breakdown of the number claims approved for each qualifying diagnoses;
5. Breakdown by law firm of approved claims to date;
6. The number of BAP exams completed;
7. The number of BAP exams scheduled to date;
8. The number of BAP evaluations that have resulted in approved monetary award claims;
9. The total number of monetary award claims made by claimants not represented by counsel and out of those the total number approved for payment broken down by the claimed qualified diagnoses;
10. The number of audits requested by the NFL parties, class counsel, and the results for each;
11. The number and types of claims determined to be eligible for a monetary award by the claims administrator but waiting for feedback from the AAP. Please include the length of time between determination of eligibility and determination from the AAP.

I look forward to hearing back from you. Hope you are doing well.

Lance

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,
Plaintiffs,

Hon. Anita B. Brody

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

April 5, 2018

Anita B. Brody, J.

MEMORANDUM

Over the past year, the Court has focused on the implementation of the Settlement Agreement. Now that implementation is in progress, it is time to focus on attorneys' fees. There are four key issues for the Court to decide:

- (1) the total amount for the common benefit fund;
- (2) the allocation of the common benefit fund among Class Counsel;
- (3) the amount, if any, to be set aside for attorneys' fees incurred in the implementation of this complex Settlement Agreement and the possible need for future attorneys' fees throughout the 65-year term of the Agreement; and
- (4) the reasonableness of the amount of fees to be paid by individual Class Members from their Monetary Awards to individually retained plaintiffs' attorneys ("IRPAs").

In this opinion, I will address the first issue, the total amount for the common benefit fund. The fourth issue, relating to IRPA contingent fee agreements will be addressed in another

opinion also filed today. The second and third issues relating to allocation and funding for future implementation will be determined at a later date.

Class Counsel has petitioned the Court for \$112.5 million in reasonable costs and attorneys' fees. I will award to Class Counsel the requested amount comprised of \$106,817,220.62 in attorneys' fees and \$5,682,779.38 in costs. The attorneys' fee portion of the award amounts to approximately 11% of the total value of the Settlement.

Class Counsel also has petitioned the Court to holdback 5% of all Monetary Awards to pay for past and future work implementing the Settlement. I currently do not have enough information to predict the amount of compensation Class Counsel will need for implementation. Therefore, as a precaution, I reserve judgment on the holdback request, and the Claims Administrator will continue to holdback 5% of each Award.¹

I. BACKGROUND

This case began as an aggregation of lawsuits brought by former Players against the NFL Parties for head injuries sustained while playing NFL football. On January 31, 2012, the MDL was formed and proceedings were centralized in this Court. The parties spent almost two years briefing complex motions to dismiss and engaging in intense negotiations before a preliminary class action settlement was submitted for approval. On January 14, 2014, the Court denied preliminary approval over concerns as to the adequacy of the proposed \$675 million settlement fund in light of uncertainty regarding the magnitude of damages.

On April 22, 2015, after crucial revisions were made to the Settlement, the Court granted final approval under Federal Rule of Civil Procedure 23(b)(3). The revised Settlement Agreement established an *unlimited* fund to compensate retired NFL Players, valued then at

¹ The Court hopes to address this issue once more data regarding the scope of implementation work is available—ideally in one year.

close to \$1 billion. The Agreement also included other benefits to Class Members such as an uncapped Baseline Assessment Program, valued at \$75 million, a \$10 million Education Fund, and funding for a Claims Administrator to process Monetary Awards.

The Settlement Agreement also provided for the NFL Parties to pay “Class Counsel’s attorneys’ fees and reasonable costs,” without objection, up \$112.5 million. Settlement Agreement § 21.1, ECF No. 6481-1 at 77-78. This same provision of the Settlement Agreement allowed Class Counsel to petition the Court for a holdback “up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel.” *Id.* at 78.

On April 18, 2016, the Third Circuit approved the Settlement Agreement. Petitions for review by the United States Supreme Court were sought by objectors and denied. On January 6, 2017, the Agreement became final upon the expiration of the time to file a Supreme Court rehearing petition.

On February 13, 2017, Co-Lead Class Counsel filed a fee petition, on behalf of the entire Class Counsel, seeking the full \$112.5 million provided for by the Settlement Agreement for reasonable expenses and attorneys’ fees. Fee Petition Mem. 3, ECF No. 7151-1. The petition filed by Co-Lead Class Counsel also seeks the 5% holdback of each Monetary Award to pay for costs and fees associated with implementing the Settlement.² In response to Co-Lead Class Counsel’s petition, more than 20 objections were filed, with most of the concerns relating to the 5% holdback request. On April 10, 2017, Co-Lead Class Counsel filed an Omnibus Reply to all objections. Omnibus Reply, ECF No. 7464. A request for discovery related to the fee petition was also filed by an objector, and Co-Lead Class Counsel responded.

² Because of this pending request, the Claims Administrator has been withholding 5% of all Monetary Awards while awaiting the Court’s decision on this issue.

The Court appointed Professor William B. Rubenstein of Harvard Law School as an expert witness on attorneys’ fees, covering the issues of (1) fees to be paid to individually retained plaintiffs’ attorneys (“IRPAs”) and (2) Class Counsel’s 5% holdback request. Professor Rubenstein then issued an Expert Report covering those topics. *See* Expert Report, ECF No. 9526. Interested parties were given the opportunity to respond to the Expert Report. Professor Rubenstein then filed a reply to the interested parties’ responses to the Expert Report. Expert Reply, ECF No. 9571. Lastly, several interested parties filed sur-replies to Professor Rubenstein’s reply.

The implementation process has been ongoing for over a year. The Monetary Awards claims process began accepting claims on March 23, 2017, and, as of this date, the Claims Administrator has issued notices of payable Monetary Awards in 369 claims for a total value of over \$400 million. *See* NFL Concussion Settlement Website, <https://www.nflconcussionsettlement.com> (last visited April 4, 2018). With money now flowing to Class Members, it is appropriate for the Court to compensate Class Counsel.

II. DISCUSSION

Federal Rule of Civil Procedure 23(h) states that a “court may award reasonable attorney’s fees . . . that are authorized by law or by the parties’ agreement.” Thus, “a thorough judicial review of fee applications is required in all class action settlements.” *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 819 (3d Cir. 1995). The duty to review fee applications “exists independently of any objection.” *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 730 (3d Cir. 2001) (quoting *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir.1999)).

This Court is obligated to protect the interests of the Class, “acting as a fiduciary for the class.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307-08 (3d. Cir. 2005) (citing *Cendant*, 264

F.3d at 231); *Report of the Third Circuit Task Force, Court Awarded Attorney's Fees*, 108 F.R.D. 237, 251 (1985). The Settlement Agreement is in accord, stating that disbursement of attorneys' expenses and fees is "subject to the approval of the Court." Settlement Agreement § 21.1, ECF No. 6481-1, at 78. Here, the Parties agreed that the NFL would pay up to \$112.5 million in expenses and fees without objection, and Class Counsel has requested that exact amount.

A. Expenses

Class Counsel has requested the payment of \$5,682,779.38 in expenses. Consistent with my fiduciary obligation to review all of Class Counsel's fee requests, I have reviewed the expenses submitted and concluded that they are reasonable. There have been no objections to the expenses requested by Class Counsel. Hence, I will award Class Counsel reimbursement for the expenses submitted.

B. Attorneys' Fees

Class Counsel has requested \$106,817,220.62 in attorneys' fees, which represents approximately 11% of the value of the Settlement Agreement. I will award Class Counsel the requested amount.

There are two methods for determining the reasonableness of attorneys' fees in class actions cases: (1) percentage-of-recovery and (2) lodestar. The use of each varies based on the type of litigation. "Common fund cases . . . are generally evaluated using a 'percentage-of-recovery' approach, followed by a lodestar cross-check." *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citation omitted).

Where, as here, a defendant has voluntarily undertaken the establishment of a separate fund to pay class counsel's costs and fees, the case is most appropriately reviewed as a common fund case. *See, e.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d

283, 333-34 (3d Cir. 1998); *GM Trucks*, 55 F.3d at 822. Therefore, I will evaluate the request in this case as a common fund by using the percentage-of-recovery approach with a lodestar cross-check.

1. Percentage-of-Recovery

The award in this case produces a reasonable percentage-of-recovery of 11%. The percentage-of-recovery approach “compares the amount of attorneys’ fees sought to the total size of the fund.” *Halley*, 861 F.3d at 496. To determine if the percentage chosen is reasonable, a court must apply the factors found in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) and *Prudential*, 148 F.3d at 338–40, which are:

- (i) the size of the fund created and the number of persons benefitted;
- (ii) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (iii) the skill and efficiency of the attorneys involved;
- (iv) the complexity and duration of the litigation;
- (v) the risk of nonpayment;
- (vi) the amount of time devoted to the case by plaintiffs’ counsel;
- (vii) the awards in similar cases;
- (viii) the value of benefits attributable to the efforts of Class Counsel relative to the efforts of other groups, such as government agencies conducting investigations;
- (ix) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and
- (x) any innovative terms of settlement.

Halley, 861 F.3d at 496 (summarizing the *Gunter/Prudential* factors).

After a review of all ten factors, I conclude that the balance weighs in favor of awarding \$106,817,220.62 million to Class Counsel in attorneys’ fees. The performance of Class Counsel

regarding this complex Settlement Agreement has been extraordinary. The fees requested here are well-earned.

i. Size of the fund created and the number of persons benefitted

Evaluation of this first factor begins with an assessment of the overall value of the Settlement and the number of individuals that benefitted from the class action. There are more than 20,000 Class Members registered to participate in this Settlement.³ To date, more than 369 claims have been approved worth over \$400 million.

The Monetary Award Fund in the Settlement Agreement is uncapped, requiring its value to be estimated using actuarial projections. The actuarial materials for both Class Counsel and the NFL were shared during negotiations and were made publically available. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 364 (E.D. Pa. 2015), *amended sub nom. In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-MD-02323-AB, 2015 WL 12827803 (E.D. Pa. May 8, 2015). An updated analysis was provided in April 2017, which accounted for additional data on registration rates. Initially, the Monetary Award Fund was valued at \$950 million. The revised estimate places the value at over \$1.2 billion⁴ due to higher than expected registration. Importantly, any risk that the Fund is undervalued by the actuarial estimates is borne by the NFL. Therefore, if the level of injury or participation rate is higher than predicted, the value to Class Members will increase accordingly.⁵

³ The deadline to register in the Settlement has passed. The Settlement does allow for late registration upon a showing of good cause.

⁴ The net present value of the estimated Monetary Award Fund is \$785 million. Co-Lead Class Counsel Response to Expert Report 4, ECF No. 9552-1.

⁵ Additionally, the uncapped Monetary Award Fund will also be used to pay costs to compensate the Special Masters, the Appeals Advisory Panel, and the Lien Resolution Administrator. The fees for these services were not calculated as a part of the value of the

To fully value the entire Settlement, however, the value of the Monetary Award Fund needs to be combined with the value created by five other provisions: the Baseline Assessment Program, the Education Fund, Notice Costs, Claims Administration, and the Attorneys' Fees Provision. The updated actuarial analysis including these values shows that the total estimated value of the Settlement is approximately \$1.5 billion. Co-Lead Class Counsel Response to Expert Report 4, ECF No. 9552-1. To properly value the 65-year Settlement for our purposes though, this Court must use the net present value of the Settlement, which is \$982.2 million. *Id.*

ii. *Presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel*

In evaluating the second factor, I must consider the presence or absence of substantial objections to the Settlement terms and Class Counsel's fee request. As this Court and the Third Circuit have already indicated, the Class reacted favorably to the terms of the Settlement Agreement. Only approximately 1% of Class Members filed objections and only 1% opted out. *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016), *as amended* (May 2, 2016). As noted above, more than 20,000 Class Members have registered, exceeding the initial actuarial estimates. The positive response is all the more significant because the details of the terms of this Settlement Agreement were widely known and information was made broadly available, thereby allowing well-informed registration decisions.

There are approximately twenty objections to Class Counsel's fee petition. The vast majority of these objections relate to Class Counsel's request for a 5% holdback of Monetary Awards to pay for implementation work. Those objections have been considered, and the Court

Monetary Award Fund in the actuarial estimates. These services provide even more value for the Class that is not accounted for in the \$1.2 billion estimate.

is reserving decision on Class Counsel's request for a 5% holdback. Thus, many of the concerns raised by the objectors will be addressed at a later date.

Overall, the response to both the Settlement Agreement and to Class Counsel's fee petition has been largely positive. This factor weighs in favor of granting the requested fee award.

iii. Skill and efficiency of the attorneys involved

In approving the Settlement Agreement, I noted that "[n]o Objector challenges the expertise of Class Counsel. Co-Lead Class Counsel Christopher Seeger has spent decades litigating mass torts, class actions, and multidistrict litigations. . . . Co-Lead Class Counsel Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, and Class Counsel Gene Locks and Steven Marks possess similar credentials." *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 373. Class Counsel's performance was praised by retired United States District Court Judge Layn R. Phillips, who mediated the negotiations of this Settlement. Mot. Prelim. Approval, Ex. D, ECF No. 6073-4. Plaintiffs' appellate counsel, Professor Samuel Issacharoff possesses similarly impressive credentials and showed great skill in shepherding the settlement through the Third Circuit appeal and petitions for certiorari in the United States Supreme Court.

No one has taken issue with the skill or efficiency of Class Counsel in securing this Settlement Agreement, nor could they. This factor weighs heavily in Class Counsel's favor.

iv. Complexity and duration of the litigation

For the fourth factor, I must consider the complex nature of this litigation and the duration of these proceedings. This Settlement was secured without formal discovery, with

to bill hours as the Settlement is implemented over the next 65 years. This factor weighs in Class Counsel's favor.

v. *Risk of nonpayment*

The fifth factor is an assessment of the financial health of the defendant and the likelihood that it will be able to satisfy a successful judgment against it. *Rite Aid*, 396 F.3d at 304. The financial solvency of the NFL was not an obstacle in this litigation.

vi. *Amount of time devoted to the case by plaintiffs' counsel*

In evaluating the sixth factor, I consider the time that Class Counsel has devoted to the case. A review of summaries submitted by the attorneys is sufficient for purposes of this factor. *Accord Rite Aid*, 396 F.3d at 307-08 (endorsing summaries of hours worked for lodestar calculation). Class Counsel has submitted summaries detailing the litigation that required more than 50,000 hours of work.

The litigation in this case would not have reached a settlement within such a short period of time if it were not for the intensive preparation by Class Counsel prior to and during negotiations. As Class Counsel explained, “[t]hose efforts included researching Plaintiffs’ claims, developing information about the Class, contesting the NFL Parties’ threshold preemption motions, consulting with numerous experts (including medical, economic, and actuarial), exchanging reams of information with the NFL Parties, extensive and spirited mediation, and defending the Settlement at three judicial levels” Fee Petition Mem. 43 (footnote omitted). Lastly, to reiterate, Class Counsel will remain involved in this case for the entire 65-year term of the Agreement. The time spent in this matter has been extensive and will continue. This factor favors approval of the fee application.

vii. *Awards in similar cases*

Next, I will compare the award requested in this case with awards in similar actions. *Rite Aid*, 386 F.3d at 303-04. An award of \$106,817,220.62 for securing the Settlement Agreement constitutes approximately 11% of the estimated present value of the overall fund (\$982.2 million). *See* Expert Reply 2-3. Class Counsel has provided extensive citation to cases both in and outside this district that present similar percentage rates for comparison. *See* Fee Petition Mem. 44-45. Additionally, Class Counsel has provided a study by Professor Brian T. Fitzpatrick, which notes that the average fee award for class settlements is 13.7% nationwide with a median of 9.5%. *Id.* at 47.⁶ The 11% award here compares favorably to similar cases, thus this factor favors approval.⁷

viii. *Value of benefits attributable to the efforts of Class Counsel relative to the efforts of other groups, such as government agencies conducting investigations*

This was not a case “where government prosecutions [laid] the groundwork for private litigation.” *In re Diet Drugs*, 582 F.3d 524, 544 (3d Cir. 2009) (citation omitted). This case required a pioneering effort by Class Counsel.

⁶ One objector urges a narrower review of the cases, suggesting that I compare the fees in this case specifically with the fees in the *Avandia* and *Diet Drugs* cases. Cobb Obj. Mem. 4-6, ECF No. 7401 (citing *In re Avandia Marketing, Sales Practices & Prods. Liab. Litig.*, No. 07-MD-01871 2012, WL 6923367 (E.D. Pa. Oct. 19, 2012); *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442 (E.D. Pa. 2008)). I have considered each of those cases and conclude that the fee request here compares favorably. I also believe that a broader view of the cases is a better measure of the fee award than simply comparing the percentage-of-recovery.

⁷ Some objectors suggest this is a “mega-fund” case, requiring generally lower fee percentages than present here. Class Counsel argues that this case should not be classified as a “mega-fund.” Ultimately, I do not believe that the classification has any significant impact on the evaluation here. Whether this is a “mega-fund” or not, I am obligated to simply apply the “fact-intensive *Prudential/Gunter* analysis.” *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 331 n.4 (3d Cir. 2011) (quoting *Rite Aid*, 396 F.3d at 303). I have done so.

In fact, Class Counsel was actually fighting *against* prior cases in which the NFL Parties had successfully utilized defenses to obtain pretrial dismissals. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 391-92. This litigation required Class Counsel to reinvent the Plaintiff's position by conducting new research, developing experts, and briefing issues without the benefit of previous successful lawsuits.

Some objectors note that certain congressional hearings aided Class Counsel. While those proceedings undoubtedly provided some of the foundation for this litigation, the impact was limited. Overall, this factor strongly supports granting the requested fee.

ix. Percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained

Assessment of fees for Class Counsel and individually retained plaintiffs' attorneys ("IRPAs") in an MDL/class action is a complicated matter. I have taken great care to compartmentalize the fees sought by Class Counsel for the work done to advance the interests of the Class and the work done by IRPAs to advance the interests of their individual clients. As is discussed in the IRPA fee cap opinion also issued today, the market rates for counsel are important for purposes of that analysis. As is also discussed in that opinion, I have considered the overall fees that are properly paid to *all* attorneys involved in this litigation. I have determined that a 33% overall contingent fee rate for both Class Counsel and IRPAs combined is reasonable. To achieve the 33% overall rate, I presumptively capped IRPA fees at 22%. In light of that determination, Class Counsel's 11% award is reasonable under this factor.

x. Any innovative terms of settlement

Perhaps the strongest factor weighing in favor of the acceptance of Class Counsel's fee request is the final factor that takes into account the innovative terms of this Settlement Agreement. These terms have been noted throughout this analysis, but they bear repeating.

The 65-year Settlement Agreement in this case is uncapped, ensuring that funding will always be available for Class Members to receive Monetary Awards. It provides a complex matrix for determining Monetary Award amounts. Through this design, the Settlement Agreement ensures that Class Members' common exposure to the risks of concussive hits predominates, while simultaneously addressing any specific differences in impairments. The Agreement also accounts for the NFL Parties' causation concerns by reducing Awards based on a player's age at the time of diagnosis and the number of years played in the NFL.

Recognizing that CTE is an impairment that could not be diagnosed in a living player, the Settlement creatively implements a system to compensate cognitive symptoms associated with CTE instead. CTE "inflicts symptoms compensated by Levels 1.5 and 2 Neurocognitive Impairment and is strongly associated with the other Qualifying Diagnoses in the Settlement." *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. at 400.

Without these innovative terms, a settlement might not have been possible under current Supreme Court precedent. This factor weighs heavily in Class Counsel's favor.

xi. Conclusion

After looking at all of the *Prudential/Gunter* factors, it is clear that under a percentage-of-recovery analysis the 11% award of \$106,817,220.62 million is reasonable.

2. Lodestar Crosscheck

Once the percentage-of-recovery factors are considered, a lodestar cross-check is used to check the valuation. "The lodestar award is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate" *Rite Aid*, 396 F.3d at 305. "The lodestar crosscheck 'is performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier.'" *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 n.61 (3d Cir. 2011) (quoting *In re AT & T Corp.*, 455 F.3d 160, 164 (3d Cir.

2006)). “The multiplier endeavors ‘to account for the contingent nature or risk involved in a particular case,’ and may be adjusted ‘to account for particular circumstances, such as the quality of representation, the benefit obtained for the class, [and] the complexity and novelty of the issues presented.’” *Id.* (quoting *AT & T Corp.*, 455 F.3d at 164 n.4). Since the lodestar cross-check is “not a full-blown lodestar inquiry,” the evaluation can be based on summaries and less precise formulations. *Rite Aid*, 396 F.3d at 307 n.16 (quoting *Report of Third Circuit Task Force, Selection of Class Counsel*, 208 F.R.D. 340, 423 (2002)).

In the fee petition, Class Counsel has requested payment for 51,068 hours. Class Counsel’s submission provided documentation for more than twenty firms that worked on this case. Upon my request, Class Counsel has submitted copies of time records from these firms for *in camera* review. Additionally, Class Counsel has submitted 6,830 hours for implementation through September 2017. Thus, the combined hours are 57,898. I determine that the hours submitted by Class Counsel are a fair and reasonable representation of the work performed.

Though the hours submitted are reasonable, the billing rates are not. Early in the litigation, Class Counsel reported that “[p]laintiffs have also reached consensus to establish reasonable uniform hourly rates for all partners, associates and paralegals conducting work that benefits all plaintiffs for purposes of reimbursement for fees from the Common Benefit Fund and for lodestar check against a fee and expense request from any class settlement.” Joint Application 8, ECF No. 54. Despite this, the billing rates submitted by these law firms varied greatly. For example, billing rates submitted for partners ranged from \$500 per hour to \$1,350 per hour.

It is not reasonable that the partner rates submitted by some firms are more than twice the rates submitted by other firms.⁸ To avoid this problem with the submitted rates, I will use a blended billing rate, which is endorsed by the Third Circuit. *See Rite Aid*, 396 F.3d at 306. To “blend” rates, a court can simply average the rates of all partners, associates, and paralegals. *See In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017). Here, blending the rates of all partners, associates, and paralegals produces an average rate of \$623.05 per hour. Using this blended average, I have calculated that Class Counsel’s combined lodestar is \$36,073,348.90.

To calculate the multiplier, I must divide the fee award, \$106,817,220.62, by the lodestar amount \$36,073,348.90. This results in a lodestar multiplier of 2.96, well within the norm for this Circuit, which has noted that multipliers ranging from one to four are frequently awarded. *Prudential*, 148 F.3d at 341 (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 14.03 at 14-15 (3d ed. 1992)); *cf. Cendant*, 243 F.3d at 742 (observing a range of reasonable multipliers from 1.35 to 2.99). Considering the risk undertaken by Class Counsel and their extraordinary work in this litigation, I conclude that a multiplier of 2.96 provides strong additional support for approving the requested fee award.⁹

⁸ Class Counsel provided extensive citation to other cases where billable rates were deemed “reasonable” by a court. In those examples, courts were presented with partner billing rates that varied by approximately \$300, as opposed to the \$850 divergence here.

⁹ Significantly, even though this multiplier is reasonable, it is artificially high. The actual lodestar in this case will continue to increase as Class Counsel bills more hours for settlement implementation. It is likely that a portion of Class Counsel’s fee request will be allocated to pay for this future work. Therefore, because the lodestar and lodestar multiplier have an inverse relationship, the multiplier will continue to *decrease* as Class Counsel continues to increase the lodestar by billing hours for implementation.

C. 5% Holdback Request

Class Counsel has requested that all future implementation work be paid through a holdback of 5% of all Monetary Awards. Based on the projected value of the Monetary Award Fund, this would provide an estimated \$40 million to pay for additional costs and fees.¹⁰ I appointed Professor William B. Rubenstein of Harvard Law School to advise the Court regarding Class Counsel's holdback request. Professor Rubenstein concluded that this Court should set aside \$22.5 million from \$112.5 million request to pay for Class Counsel's work to implement the Settlement Agreement and the remaining \$90 million should be used to pay Class Counsel for their work in securing the Settlement Agreement. Expert Report 1, ECF No. 9526. Professor Rubenstein suggested that setting aside \$22.5 million into an interest bearing account would enable Class Counsel to receive \$1 million per year for implementation during the 65-year term of the Settlement. *Id.*¹¹

The Court is troubled that the \$1 million per year suggested by Professor Rubenstein may be insufficient to pay the costs and fees associated with future implementation of the Settlement. The past year of implementation alone has required Class Counsel to bill well over \$5 million in costs and fees. *See* Decl. Chris Seeger 19, ECF No. 8447 (summarizing implementation costs and fees through September 2017). While the Court assumes that Class Counsel's implementation work will decrease as the Settlement progresses, no party or expert has provided the Court with an adequate estimate for the amount of work that will be required in the future.

¹⁰ Class Counsel provided an updated analysis of the Settlement, which estimates the value of the Monetary Award Fund to be \$1,297,000,000, with a net present value of \$785,000,000. Co-Lead Class Counsel Response to Expert Report 4. Five percent is, therefore, \$39,250,000.

¹¹ As a last resort, Professor Rubenstein stated that the Court could consider a 2% holdback of Monetary Awards to help pay for implementation. Expert Reply 7-8.

Because of this current ambiguity and in an abundance of caution, the Court reserves decision on the 5% holdback request. The Court plans to adopt Professor Rubenstein's recommendation to set aside some portion of the \$112.5 million for future implementation work, but the Court simply needs more time to evaluate the situation before making a final determination regarding the amount of a set aside from the \$112.5 award and the amount, if any, of a percentage holdback of Monetary Awards. Reserving decision will allow for the accumulation of more data that can be used to more accurately assess future costs and fees. The issue will be revisited at a future point once a clearer picture has emerged. In the meantime, the Claims Administrator will continue to holdback 5% of each Monetary Award as a precautionary measure. The holdback comes directly from the Award if a Class Member is unrepresented by counsel, however, if the Class Member is represented by an IRPA, then the holdback comes from the IRPA's contingent fee.¹²

The Court recognizes the hardship that holding back funds may place on unrepresented Class Members and IRPAs, but the hardship is necessary to ensure the integrity and longevity of the Settlement. The Court hopes and anticipates that the combination of a set aside and a precautionary 5% holdback will provide more than enough money for implementation. If the 5% holdback is more than necessary, then any remaining portion of that amount will be returned to Class Members and IRPAs.

¹² In the opinion also released today regarding the IRPA fee cap, I set a presumptive cap of 22%. Therefore, with the 5% holdback, the cap is effectively 17% until this issue is resolved. As noted in that opinion, a 17% cap is still reasonable while keeping the presumptive overall contingent fee payment at 33%—the 5% holdback plus IRPAs' 17% contingent fee and Class Counsel's 11% award. For Class Members without IRPAs, their overall contingent fee payment at this point will be 16%—the 5% holdback plus Class Counsel's 11% award.

D. Incentive Awards for Class Representatives

As a final matter, Class Counsel seeks incentive awards of \$100,000 for each of the Class Representatives in this case: Corey Swinson, Shawn Wooden, and Kevin Turner. There has not been any objection submitted regarding this request. Upon review, I approve the awards. *Accord Brady v. Air Line Pilots Ass'n*, 627 F. App'x 142, 146 (3d Cir. 2015) (approving a \$640,000 incentive award as part of a \$15.9 million attorneys' fee award).

As was explained by Class Counsel, the work performed by the Class Representatives in this litigation was important. Mr. Swinson was the original representative for Subclass 1, and Mr. Wooden took over that role after Mr. Swinson's passing. Class Counsel reports that both worked closely with Subclass 1 counsel, Arnold Levin, as the terms of the Settlement Agreement were negotiated. After final approval, Mr. Wooden remained actively involved, helping to provide information to other players and their families about the Settlement Agreement. Class Counsel reports that Mr. Turner provided similar support for Subclass 2 counsel, Dianne Nast. Mr. Turner passed away shortly before the Third Circuit affirmed the Settlement Agreement.

I believe that this work provided a great value to the Class. The contributions should be recognized through a payment to Mr. Wooden and payments to the estates of Mr. Turner and Mr. Swinson. Because there have been no objections raised to these disbursements and the Class Representatives' roles will not change going forward, I conclude that these amounts will be paid immediately and prior to allocation of the common benefit fund to Class Counsel.

III. Conclusion

For these reasons, I conclude that Co-lead Counsel's petition for award of attorneys' fees and reimbursement of expenses for Class Counsel will be granted.¹³ The request for a 5%

¹³ I have not addressed the allocation of this common benefit fund in this opinion. The allocation will be addressed in a separate opinion. At that time, I will review the proposed fee allocation

holdback of Monetary Awards remains pending.

s/Anita B. Brody

ANITA B. BRODY, J.

submitted by Co-Lead Class Counsel, the objections, and Co-Lead Class Counsel's reply. I will also review the fee petitions submitted (ECF Nos. 7070, 7116, 7230, and 8725) and the related responses.

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Hon. Anita B. Brody

Plaintiffs,

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

April 5, 2018

Anita B. Brody, J.

MEMORANDUM

Over the past year, the Court has focused on the implementation of the Settlement Agreement. Now that implementation is in progress, it is time to focus on attorneys' fees. There are four key issues for the Court to decide:

- (1) the total amount for the common benefit fund;
- (2) the allocation of the common benefit fund among Class Counsel;
- (3) the amount, if any, to be set aside for attorneys' fees incurred in the implementation of this complex Settlement Agreement and the possible need for future attorneys' fees throughout the 65-year term of the Agreement; and
- (4) the reasonableness of the amount of fees to be paid by individual Class Members from their Monetary Awards to individually retained plaintiffs' attorneys ("IRPAs").

This last issue impacts on the Monetary Awards to be distributed to individual Class Members and will be addressed below.¹

On September 14, 2017, I appointed Professor William B. Rubenstein of Harvard Law School as an expert witness on attorneys' fees, covering the issues of (1) fees to be paid to individually retained plaintiffs' attorneys ("IRPAs") and (2) Class Counsel's 5% holdback request. Professor Rubenstein then issued an Expert Report covering those topics. Interested parties were given the opportunity to respond to the Expert Report. Professor Rubenstein then filed a reply to the interested parties' responses to the Expert Report. Lastly, several interested parties filed sur-replies to Professor Rubenstein's reply.

For the reasons set forth below, after considering the recommendations of Professor Rubenstein and the viewpoints of interested parties, I adopt the conclusions of Professor Rubenstein and order that IRPAs' fees be capped at 22% plus reasonable costs. I further adopt Professor Rubenstein's suggestion that IRPAs and Class Members be allowed to file petitions seeking upward or downward deviations from this fee cap. Such deviations, however, will only be granted in exceptional or unique circumstances.

I. BACKGROUND

In his Expert Report, Professor Rubenstein provided extensive background on IRPAs' involvement in this litigation. Expert Report 2-12, ECF No. 9526. Most importantly, Professor Rubenstein explained the special circumstances related to IRPAs in this case:

While Class Counsel represent the interests of all class members in the aggregate, many individual class members also have their own lawyers. This MDL encompassed thousands of individual lawsuits filed by hundreds of players who were represented individually (or in groups) by their own lawyers. Moreover, other players (or their families) retained individual counsel to represent them in

¹ Because the amount of fees to be paid to Class Counsel impacts the calculation of the fee cap addressed in this opinion, the common benefit fund opinion has also been filed today.

the course of the class action proceedings. The class action settlement foreclosed all individual cases, except for those pursued by players who opted out of the settlement, and the class action notice advised players that, “You do not have to hire your own attorney.” Nonetheless, about half (47% or 9,477 out of 20,376) of the parties that have registered for payment through the class action settlement are represented by their own attorneys.

Id. at 7-8 (footnotes omitted).

II. DISCUSSION

A. The Authority to Impose a Fee Cap

I adopt Professor Rubenstein’s conclusion that a court has the authority to impose a fee cap derived from both the power of a court presiding over an MDL or class action and the ability of a court to review individual fee awards. *Id.* at 12-19.

In MDLs and class actions, “district courts have routinely capped attorneys’ fees *sua sponte*.” *In re World Trade Center Disaster Site Litig.*, 754 F.3d 114, 126 (2d Cir. 2014); *see also In re: Oil Spill by Oil Rig “Deepwater Horizon” in Gulf of Mexico, on Apr. 20, 2010*, No. 10-md-2179 (E.D. La. June 15, 2012) (order setting caps on individual attorneys’ fees), ECF No. 6684 at 2; *In re Vioxx Prod. Liab. Litig.*, 650 F. Supp. 2d 549, 553-54, 558-59 (E.D. La. 2009).

In complex mass litigation, “excessive fees can create a sense of overcompensation and reflect poorly on the court and its bar,” negatively impacting “[p]ublic understanding of the fairness of the judicial process.” *In re Zyprexa Prod. Liab. Litig.*, 424 F. Supp. 2d 488, 493-94 (E.D.N.Y. 2006). Consequently, courts must curb such excessive or unreasonable fees to safeguard the public’s perception of the courts and the legitimacy of the legal system’s handling of massive MDLs and class actions. The way to curb such fees is with a cap.

District courts also derive authority to cap fees from their power to review an individual attorney's fee agreement. "Third Circuit law unequivocally supports the proposition that this Court possesses the inherent authority to regulate the contingent fees of lawyers appearing before

it and any lawyer representing a class member in this Settlement is clearly subject to this authority.” Expert Report 19; *see also McKenzie Constr., Inc. v. Maynard*, 758 F.2d 97, 100 (3d Cir. 1985) [*McKenzie I*] (“[I]n a civil action, a fee may be found to be ‘unreasonable’ and therefore subject to appropriate reduction by a court”); *Dunn v. H. K. Porter Co.*, 602 F.2d 1105, 1110 (3d Cir. 1979) (“[W]here there is a fee contract, courts have the general power to override it, and set the amount of the fee.” (internal quotation marks omitted)).

B. The Need for a Fee Cap

I agree with Professor Rubenstein that the circumstances of this litigation require the implementation of a cap. I adopt Professor Rubenstein’s conclusion that a fee cap is necessary in this case, because:

(1) *players with IRPAs are paying two [sets of] lawyers’ fees* (2) *in a case settled on an aggregate basis* (3) *following relatively little litigation* (4) *requiring IRPAs to undertake a modest amount of work . . . for [5] vulnerable clients [6] who may be subject to contingent fees contracts that were either problematic at formation or are no longer reasonable.*

Expert Report 26 (emphasis added). The reality is that two sets of attorneys—IRPAs and Class Counsel—have worked to achieve results for individual Class Members. Although some of the work of IRPAs may be considered separate and distinct from the work of Class Counsel, it is undeniable that all IRPAs have benefitted from Class Counsel’s work. An assessment of the reasonableness of IRPAs’ fees requires a deduction for Class Counsel’s work, which reduced the amount of work required of IRPAs. *See Walitalo v. Iacocca*, 968 F.2d 741, 749 (8th Cir. 1992) (acknowledging that class counsel reduced the amount of work required of individual counsel and directing “the district court to review the plaintiffs’ fee arrangements with their individual counsel for reasonableness in light of their decreased responsibilities and the fee award to [class counsel]”). This reduction is necessary to prevent a “free-rider problem”—enabling IRPAs to

financially benefit from the work of Class Counsel even though they did not bear the costs. *In re Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603, 606 (1st Cir. 1992); *cf. In re Vioxx*, 760 F. Supp. 2d at 653 (“[A]s between a common benefit attorney who expended considerable time, resources, and took significant economic risks to produce the fee, and the primary attorney who did not, it is appropriate and equitable that the former receive some economic recognition from the [latter].”) Additionally, it is necessary to reduce IRPAs’ contingent fees to avoid the problem of Class Members paying twice for the same work—once to Class Counsel and then again to IRPAs.²

² Many of the interested parties contend that Class Counsel’s fee has no bearing on Class Members’ recoveries because the Settlement is uncapped. Thus, they argue that Class Counsel’s fee should not be calculated in the total amount of attorneys’ fees attributable to each Class Member. I join Professor Rubenstein in rejecting this argument:

A simple analogy helps demonstrate why I continue to believe that Class Counsel’s contingent fees must be counted as part of the class’s recovery regardless of how the settlement is structured. Assume a client hired a lawyer to pursue a tort claim on a one-third contingent fee basis. After some litigation, the lawyer calls the client and says, “Good news, the defendant has agreed to settle the case and you will be getting \$1.1 million. Better yet,” she continues, “After we settled your case, we negotiated my fee and the defendant separately agreed to pay me \$700,000 directly, with not a penny of that coming out of your \$1.1 million.” At that point, the client might think, “Wait a minute. It appears we are getting \$1.8 million in total and my 2/3 share should be \$1.2 million and your 1/3 share \$600,000, per our retainer agreement.” And of course the client would be right. The point of the analogy is not to suggest malfeasance by Class Counsel in this case; the analogy simply drives home the point that, in assessing the reasonableness of the fees being paid by individual class members, Class Counsel’s fees must be considered a component of the class’s relief. The facts that the parties have set class members’ individual recovery levels net of those fees, that the fees were (partially) negotiated separately from the class’s recovery, and/or that the NFL has agreed to pay all claims made in the settlement, in no way alter the point, nor are the parties’ efforts to distinguish the key Third Circuit precedents convincing.

Expert Reply 3 n.8, ECF No. 9571. Moreover, although the Settlement Agreement is uncapped, the amount of each individual Class Member’s Monetary Award is limited by

I further adopt Professor Rubenstein’s conclusion that “a one-third contingent fee best approximate[s] the risk and work that the two sets of attorneys (Class Counsel and IRPAs) undertook in this case.”³ Expert Reply 3, ECF No. 9571. Because I conclude that an overall contingent fee of 33% is appropriate, and I have concluded in a separate opinion issued today that the fee to be paid to Class Counsel will constitute approximately 11% of the Class’s recovery,⁴ the fees to be paid to IRPAs will be presumptively capped at 22%. To ensure that a 22% cap is fair to all parties involved, I must now crosscheck that number with an assessment of the relevant Third Circuit factors, data on contingent fee levels in this case, and data from other cases.

In assessing the reasonableness of contingent fees, the Third Circuit directs courts to consider the “circumstances existing at the time the arrangement is entered into, . . . the quality of the work performed, the results obtained, and whether the attorney’s efforts substantially contributed to the result.” *McKenzie Constr., Inc. v. Maynard*, 823 F.2d 43, 45 (3d Cir. 1987)

the terms of the Settlement Agreement. Thus, Class Counsel’s fee may have impacted the formula for each individual Monetary Award and must be considered a component of Class Members’ relief.

³ Some interested parties contend that the fee cap selected is arbitrary. I adopt Professor Rubenstein’s recommendation that an overall fee of 33% is appropriate given the nature of the litigation in this case. This case settled early in the litigation. As Professor Rubenstein noted:

Class Counsel settled the entire case after briefing one dispositive motion, without undertaking any formal discovery, without significant motion practice, without summary judgment briefings, and without preparing for, much less engaging in, a class (or even one bellwether) trial; no IRPA will need to undertake these tasks either. One of the firms designated as Class Counsel itself states that “[t]his is the only mega fund case in which there was no paper discovery, no depositions, no motion practice, no litigation, no trials, no trial activity.”

Expert Report 22 (footnote omitted) (internal quotation marks omitted). Given that, on average, other similar cases capped overall fees at 32.25%, the decision to use 33% is well-founded. *See, e.g., In re Vioxx*, 650 F. Supp. 2d 549 (implementing a cap of 32% on overall fees in a case settled following six bellwether trials).

⁴ The 11% figure is derived from the overall attorneys’ fee award (\$106,817,220.62) divided by the overall estimated present value of the Settlement (\$982,200,000).

[*McKenzie II*]. Importantly, a court must consider whether subsequent events have rendered an agreement—that may have been fair at the time of contracting—unfair at the time of enforcement. *Id.*

I adopt Professor Rubenstein’s conclusion that “application of the Third Circuit’s reasonableness factors argues in favor of a substantially reduced contingent fee” for IRPAs. Expert Report 28. The risks of this litigation changed dramatically throughout the various phases of litigation that were noted by Professor Rubenstein. I adopt the conclusion that “contingent fee contracts for large percentages entered into earlier in this case’s history are no longer reasonable under the case’s present circumstances.” *Id.* at 27.

I must also consider “the quality of the work performed, the results obtained, and whether the attorney’s efforts substantially contributed to the result.” *McKenzie II*, 823 F.2d at 45. The work of Class Counsel substantially contributed to the aggregate resolution of this case. The IRPAs’ work here involves the shepherding of their clients through the claims process of the Settlement Agreement. “An IRPA should be able to serve her client to this level without need of 30-40% of that award.” Expert Report 28. Therefore, the presumptive cap of 22% is reasonable, and any exceptional or unique circumstances will be accounted for on an individualized basis.

Data on the contingent fees set by IRPAs at various points during this litigation also support a reasonable cap of 22%. Professor Rubenstein evaluated 640 IRPA contracts in this case and found that the contingent fee rates “range from a low of 15% to a high of 40%, with a median of 30% and a mean of 29%.” *Id.* As the risk involved in the litigation decreased, the contracted-for rates also decreased. *Id.* at 28-29. These later contingent fee rates range between 20-25%. *Id.* at 29. Thus, the market rate for IRPAs in this case indicates that a 22% fee cap is reasonable under the current circumstances.

Comparison to fee caps in other cases confirms that a 22% fee cap here is reasonable. As Professor Rubenstein noted:

Courts in cases with similar settlement structures – *i.e.*, cases involving both central aggregate lawyers and IRPAs – have capped contingent fees in the past. In six such cases, courts set total fee caps (for both the aggregate lawyers and IRPAs) ranging from 20% to 37.18%, with an average of 32.25%; these six data points yielded effective IRPA fees ranging from 18% to 33.5%, with an average of 23.69%. In another set of seven cases, courts more directly capped IRPA rates, with those caps ranging from 5% to 33.33%, with an average of 17.95%. The average IRPA cap across all 13 cases is 20.6%. An eighth court simply awarded IRPAs a flat fee cap of \$10,000 for processing claims through the class action settlement.

Id. at 30.

In light of these considerations, including the amount of attorneys’ fees charged by both Class Counsel and IRPAs, I conclude that a fee cap of 22% for IRPAs is reasonable.⁵

C. Petitions to Deviate from the Fee Cap

I adopt Professor Rubenstein’s conclusion that counsel and their clients should be given the opportunity to petition the Court to deviate from this cap in exceptional or unique circumstances.⁶ I further adopt Professor Rubenstein’s non-exhaustive list of circumstances that might provide a party a basis to deviate from this presumptive fee. *See id.* at 32-33. As in all

⁵ As noted in the common benefit fund opinion also issued today, the Court is reserving judgment on Class Counsel’s request for a 5% holdback of all Monetary Awards as a precaution to ensure sufficient funds to pay for implementation of the Settlement. Currently, the Claims Administrator is withholding that 5% from the fee of each IRPA. Therefore, while the Court’s determination remains pending, this practice will continue. The precautionary 5% withholding effectively lowers the IRPA fee cap to 17% until further notice. The Court hopes that the 5% holdback will not be necessary for implementation. However, even if the effective 17% cap is final, the Court notes that it would also be reasonable based on Professor Rubenstein’s calculation that the average direct fee cap for IRPAs is 17.95%, *see* Expert Report 30, and his initial recommendation and support for a 15% fee cap, *see id.* at 1.

⁶ Certain interested parties contend that the fee cap violates their procedural due process rights. Prior to my decision to institute a fee cap, however, IRPAs were given an opportunity to respond to Professor Rubenstein’s recommendations for a fee cap contained in both his initial Expert Report and his Expert Reply. Additionally, they still have the opportunity to petition the Court to deviate from the cap in exceptional or unique circumstances.

cases relating to contingent fee agreements, attorneys are required to demonstrate by a preponderance of the evidence that the fee requested is reasonable. *Id.* at 33; *see also McKenzie I*, 758 F.2d at 100. These petitions will be referred to the Honorable David R. Strawbridge, United States Magistrate Judge for the Eastern District of Pennsylvania,⁷ for review in accordance with 28 U.S.C. § 636.

V. CONCLUSION

For the reasons set forth above, fees to IRPAs will be capped at 22% plus reasonable costs unless the terms of a contingent fee contract reflect a rate lower than the 22% fee cap, in which case the lower fee will apply. In exceptional or unique circumstances, the Court will entertain petitions seeking an upward or downward deviation from the presumptive fee cap.

s/Anita B. Brody

ANITA B. BRODY, J.

⁷ If necessary, these petitions may be referred to another United States Magistrate Judge for the Eastern District of Pennsylvania.

Copies **VIA ECF** on _____ to:

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**RESPONSE OF CO-LEAD CLASS COUNSEL, CHRISTOPHER A. SEEGER, TO
ANAPOL WEISS' MOTION TO COMPEL
THE CLAIMS ADMINISTRATOR TO REIMBURSE ALL CLASS COUNSEL
OUT OF THE "ATTORNEYS' FEES QUALIFIED SETTLEMENT FUND"
THE MONIES EACH CLASS ATTORNEY CONTRIBUTED TO
THE COMMON BENEFIT EXPENSES AND
FOR THE ENTRY OF AN ORDER ESTABLISHING THE
"EDUCATION FUND" PER THE SETTLEMENT AGREEMENT**

Co-Lead Class Counsel, Christopher A. Seeger, hereby responds to the Motion of Anapol Weiss to Compel the Claims Administrator to Reimburse All Class Counsel Out of the "Attorneys' Fees Qualified Settlement Fund" ("The Fund") the Monies Each Class Attorney Contributed to the Common Benefit Expenses (as Submitted for Reimbursement) and for Entry

of an Order Establishing the “Education Fund” per the Settlement Agreement, filed on March 22, 2018 [ECF No. 9807] (“Anapol Motion”), in which the Locks Law Firm belatedly joined on April 3, 2018 [ECF No. 9848] (“Locks Joinder”). For the reasons set forth below, Anapol Weiss’ first request was rendered moot today, and, as to its second request, the timing is less than optimal.

First, before addressing the underlying requests of the Anapol Motion, it should be pointed out that the Proposed Order submitted with the motion would have the “*Settlement Administrator*” “provide notice to all Class Counsel who have incurred common benefit expenses,” and direct that “[a]ll approved common benefit expenses will be paid by the *Settlement Administrator*” and that those persons tasked with implementing the Education Fund “be obliged to provide annual accounting to the *Settlement Administrator*.” ECF No. 9807-2 (emphasis added). There is no such person or entity as the “Settlement Administrator” in this case. Among others, there are a Claims Administrator (BrownGreer PLC), a BAP Administrator (Garretson Resolution Group), and a Fund Administrator for the Attorneys’ Fees Qualified Settlement Fund (“AFQSF”) (Garretson Resolution Group).

It is Garretson Resolution Group that would implement, as directed by the Court, the payment of funds to reimburse counsel for common benefit expenses from the AFQSF. The AFQSF funds are being held in the escrow account in the custody of PNC Bank, N.A. *See* ECF No. 7246.¹

¹ The Anapol Motion does reference the March 7, 2017 Order [ECF No. 7246] and the appointment of Garretson Resolution Group as the “Fund Administrator” for the AFQSF, *see* ECF No. 9807, at ¶2. As such, the repeated references to a “Settlement Administrator” are puzzling.

Additionally, in accordance with the Settlement Trust Agreement, *signed by both Sol Weiss (and presumably read by him) and Christopher A. Seeger as Co-Lead Class Counsel*, during the term of the Special Masters, it is they who would direct payment of monies from the Education Fund. Indeed, the Settlement Trust Agreement provides as follows in pertinent part:

(a) During the term of the Trust, the Trustee shall, or shall cause the Paying Agent to, make payments from time to time as follows:

- (i) *Education Trust Funds.* The Special Master (or, after the expiration of the term of the Special Master and any extensions thereof in accordance with the Settlement Agreement, the Claims Administrator), where authorized by the Settlement Agreement as certified in the Notice for Withdrawal Form (as such term is defined below), may direct the Trustee to disburse, or cause to be disbursed, funds from the Education Trust Account, by submitting a notice in the form attached hereto as Exhibit A (a “Notice for Withdrawal Form”) to the Trustee ...

Settlement Trust Agreement, § 4(a)(i). The Trust Accounts pursuant to the Settlement Trust Agreement are the Monetary Award Trust Account, the BAP Trust Account and the Education Trust Account; and those are being held by Citibank, as Trustee. Again, nothing in the Settlement Trust Agreement created a “Settlement Administrator,” and authority over the Education Fund will not even rest with the Claims Administrator until the expiration of the terms of the Special Masters.

Second, with respect to Anapol Weiss’ substantive request for payment of common benefit expenses, that request has now been rendered moot. The Court’s Memorandum and Order, dated April 5, 2018, granted Co-Lead Class Counsel’s request for reimbursement of common benefit expenses contained in the Fee Petition, filed on February 13, 2017, and awarded to Class Counsel the amount of \$5,682,779.38 in costs for common benefit work [ECF Nos.

9860, 9861]. For the record, it is noteworthy that,² as per the Fee Petition, Seeger Weiss incurred \$1,498,690.99 in unreimbursed common benefit expenses up to that point, as compared to \$1,031,971.55 for Anapol Weiss,³ and \$639,160.00 for the Locks Law Firm. *See* ECF No. 7151-2, at 29 [¶96], 43; ECF No. 7151-10, at 5 [¶7], 9; ECF No. 7151-7, at 6 [¶23], 11. At any rate, the Court has now awarded common benefit expenses to Class Counsel. So, that aspect of the Anapol Motion is moot.

Third, with regard to the Education Fund,⁴ while it is certainly an important part of the Settlement, it is simply not as vital as getting monetary awards paid as quickly as possible to those Class Members who are presently suffering with the compensable Qualifying Diagnoses. The Special Masters have been working tirelessly to that end, including having to deal with issues relating to appeals, establishing protocols and contending with those who would seek to commit fraud.

² Additionally, it is also worth noting that, unlike almost all of the other firms seeking reimbursement of common benefit expenses, Seeger Weiss also has incurred significant additional unreimbursed expenses in connection with the implementation phase of the Settlement during 2017 and the first quarter of 2018, and continues to incur common benefit expenses, as well as unreimbursed fees, related to implementation.

³ Without explanation, Anapol Weiss repeatedly refers to some inaccuracy in the amount of common benefit expenses submitted to this Court for reimbursement. *See* ECF No. 9807 at 2 n.1 and 9807-1, at 2 n.1 (“While these expenses were previously documented in a pleading submitted by co-lead counsel as totaling \$5,682,779.30, that amount is slightly inaccurate and must be supplemented.”). *See also* ECF No. 9807-2, at 1-2 (suggesting supplementation of those expenses with an amended cost statement is necessary). The Court has now awarded common benefit expenses based upon what was submitted by Class Counsel, including Anapol Weiss, over a year ago. It is troubling that Anapol Weiss is now seeking to submit an amended cost statement to change, likely seeking to increase, the amount of common benefit expenses it allegedly spent.

⁴ Both the Anapol Motion and the Locks Joinder refer to “establishing” the Education Fund. The Education Fund has already been funded by the NFL Parties – the monies are in the Education Trust Account. In accordance with the Class Action Settlement Agreement and the Settlement Trust Agreement, the NFL Parties paid the \$10,000,000 within 30 days of the Effective Date. *See* Settlement Agreement § 23.3(a); Settlement Trust Agreement § 2(a).

In light of the key role that the Special Masters will play in approving the disbursement of funds in connection with the Education Fund, as referenced above, it is clear that they would need to spend significant time reviewing the materials submitted in connection with requests for disbursement. Even before that stage, it is likely that they will be intimately involved in setting up the protocols and targeted initiatives which would be paid for with monies from the Education Fund. These responsibilities, necessarily, would take time away from the tasks that the Special Masters have been performing related to getting Class Members paid. We expect that the Special Masters will have more time in the not too distant future to devote to the implementation of the Education Fund because the Claims process is already becoming more streamlined and monetary awards have been paid at a greater rate of late.

That said, should the Court and the Special Masters determine that now is the appropriate time to begin to roll out the benefits of the Education Fund, Seeger Weiss stands ready to lead that undertaking.

Dated: April 5, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
Christopher A. Seeger
SEEGER WEISS LLP
77 Water Street
New York, NY 10005
Phone: (212) 584-0700
Fax: (212) 584-0799
cseeger@seegerweiss.com

Co-Lead Class Counsel

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing response was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: April 5, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:

ALL ACTIONS

RESPONSE BY THE CLAIMS ADMINISTRATOR TO MOTION TO PROHIBIT EX PARTE INTERVIEWS WITH TREATING PHYSICIANS (DOCUMENT NO. 9815) AND PARTIAL JOINDER (DOCUMENT NO. 9843) TO THE MOTION BROUGHT BY THE LOCKS LAW FIRM, FILED BY NEUROCOGNITIVE FOOTBALL LAWYERS, LLC

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND AND ARGUMENT.....	2
A. The Law Firm(s) Involved in These Motions	2
B. Monetary Award Claims Received from NCFL.....	5
C. The Audit Process Under the Settlement Agreement	9
1. Relevant Provisions of the Settlement Agreement	9
2. The Audit Procedure and the Audit Rules	9
3. How an Audit Starts.....	10
4. The Goal of an Audit Investigation	12
5. Our Powers of Investigation in an Audit	14
6. Seeking Information from a Player’s Physician in an Audit	15
D. The NCFL Motion to Prohibit Ex Parte Interviews With Treating Physicians	17
E. The Partial Joinder by NCFL in the Locks Motion	21
1. The Locks Motion.....	21
2. Audit Investigations of NCFL Claims	22
3. Doctor 1 and Doctor 2.....	23
4. Neuropsychologist Group A	26
5. Neuropsychologist B.....	27
6. Doctor 3	28
7. Player A	29
8. Complaints by NCFL in the Partial Joinder.....	30
III. CONCLUSION.....	32

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**RESPONSE BY THE CLAIMS ADMINISTRATOR TO MOTION TO PROHIBIT EX
PARTE INTERVIEWS WITH TREATING PHYSICIANS (DOCUMENT NO. 9815) AND
PARTIAL JOINDER (DOCUMENT NO. 9843) TO THE MOTION BROUGHT BY THE
LOCKS LAW FIRM, FILED BY NEUROCOGNITIVE FOOTBALL LAWYERS, LLC**

I. INTRODUCTION

BrownGreer PLC, the Court-appointed Claims Administrator of the Class Action Settlement Agreement of this litigation, submits this Response to two pleadings filed by Neurocognitive Football Lawyers, LLC ("NCFL"):¹

- 1. Motion on Physicians (Document 9815):** The "Former NFL Player-Claimants' Motion to Prohibit Ex Parte Interviews with Their Treating Physicians," filed on March 26, 2018; and
- 2. Partial Joinder (Document 9843):** "The Yerrid Law Firm and Neurocognitive Football Lawyers' (1) Partial Joinder to the Motion Brought by the Locks Law Firm for Appointment of Administrative Counsel, (2) Motion to Review Deprivation of Appeal Rights and (3) Requesting Oral Argument," filed on March 30, 2018.

¹ In this Response, we will refer to this company as "NCFL," though the firm name of "Neurocognitive Football Lawyers" normally would be abbreviated as "NFL," which would be confusingly identical in name to the NFL that is a party to the NFL Concussion Settlement Agreement.

In their Partial Joinder, Yerrid and the NCFL mention a “Motion Requesting the Special Master Review the Fraud Detection Procedures of the Claims Administrator, to Set Aside Unreasonable Audit Notices, and to Direct the Claims Administrator to Provide Important Information to the Class Members,” but that Motion was never filed in this docket and is not before the Court. We received a copy of it by email from a Keith O’dell at Gibbs and Parnell on March 23, 2018, but there is no such motions practice with the Special Masters under the Settlement Agreement, the Rules Governing the Audit of Claims adopted by the Special Masters, or under any Order of this Court. On the day before, March 22, 2018, the Yerrid Law Firm and NCFL had filed in the docket a “Notice of Correction of Certificate of Service” (Document 9810) saying the representation in the certificate of service on that motion that it had been filed with the Court was a “Scrivener’s error.” As a result, this Response does not reply to that motion, though most of what it asserted can be found in NCFL’s Partial Joinder.

II. FACTUAL BACKGROUND AND ARGUMENT

A. The Law Firm(s) Involved in These Motions.

NCFL is a consortium of four Florida-based lawyers or law firms: (1) Gibbs and Parnell, P.A. (Tampa); (2) Jeffrey D. Murphy, P.A. (Tampa); (3) The Yerrid Law Firm, P.A. (Tampa); and (4) Holliday Karatinos Law Firm, PLLC (Brooksville, Iverness and Lutz). These four firms incorporated NCFL on February 18, 2016, which is after this Court’s April 22, 2015 Final Approval of the Settlement Agreement and before the Effective Date of the Settlement Agreement on January 7, 2017, to represent Retired NFL Football Players (“Players”) and their representatives in this Settlement Program. The lead person at NCFL appears to be Tom Parnell of Gibbs and Parnell, who also is NCFL’s registered agent, though our day-to-day communications are with Mr. O’dell at Gibbs and Parnell. NCFL’s mailing

address is the same as that of Gibbs and Parnell. We also have communicated several times with Steven Yerrid of The Yerrid Law Firm, P.A.

None of these four firms was involved in any lawsuits against the NFL before the Settlement Agreement. NCFL obviously was not, because it did not exist before the Settlement Agreement.

While NCFL apparently has no website of its own, the four member firms do. Three of them have material on their websites about services in this Program. Gibbs and Parnell lists “NFL Concussion Lawsuit Claims” as one of its personal injury practice areas. In its overview of that service (<http://www.car-accident-attorney-tampa.com/nfl--concussion-lawsuit-claims>), the firm states: “NFL Concussion? We can help!” and “It’s not too late – join the settlement now – call us to schedule a private medical evaluation at no cost to you.” The firm’s website summarizes some basic information about the Settlement, but it is outdated because it suggests that registration has not yet started (the Registration deadline passed on August 7, 2017) and that persons still can exclude themselves (the Opt Out deadline passed on October 14, 2014). Holliday Karatinos Law Firm, PLLC, has a page with the header “NFL Concussion Settlement Claims – Neurocognitive Deficits” on which it discusses the litigation history, medical and scientific information and solicits potential clients (<https://www.helpinginjuredpeople.com/nfl-concussion-settlement-claims/neurocognitive-deficits/>). Jeffrey D. Murphy states on his website (<https://www.personal-injury-lawyer-tampa-fl.com/>) that he is representing 200 retired Players for claims against the NFL in the NFL Concussion Settlement Lawsuit. The Yerrid Law Firm does not have any information on its website about the Settlement or any clients it

has in the Program (<http://yerridlaw.com/firm-profile/>). None of these four websites explains that the firms have joined forces in NCFL.

Every lawyer and firm acting for Settlement Class Members in this Program must identify themselves to us, tell us which Settlement Class Members they represent and then set up an online portal account with us to register their clients, submit materials to us and receive notices and information from us on their clients and our processing of their claims. Not one of the four member firms in NCFL has done any of that. None has registered with us as representing any Settlement Class Members; none has set up any online portal with us. Instead, all their activity in this Program has been in the name of NCFL, which has notified us that it represents 188 registered Settlement Class Members. Table 1 shows NCFL's four authorized users on its portal and their activity on it:

Table 1		NCFL PORTAL USERS
	User	Access (as of 4/9/18)
1.	Tom Parnell (ko@gibbsandparnell.com)	Last accessed on 4/7/18 at 11:05 a.m.
	Tom Parnell [personal email address]	Never accessed through this email
2.	Jim Holliday (jimholliday@helpinginjuredpeople.com)	Never accessed through this email
	Jim Holliday (kimberlyclement@helpinginjuredpeople.com)	Last accessed on 4/6/18 at 8:18 a.m.
3.	Jeff Murphy (JM@JeffMurphyLaw.com)	Last accessed on 8/7/17 at 7:36 p.m.
4.	Ariel Rodriguez (ar@gibbsandparnell.com)	Last accessed on 4/7/18 at 4:26 p.m.

We think that Mr. O'dell is using the portal through the account assigned to Tom Parnell.

Mr. Yerrid has no portal account with us and has never logged on himself to see his clients' information there.

B. Monetary Award Claims Received from NCFL.

Of the 188 Retired NFL Football Players NCFL registered in the Program, the firm has sent us Monetary Award Claim Packages on 143, as shown in Table 2:²

Table 2		MONETARY AWARD CLAIMS FROM NCFL
	Qualifying Diagnosis Asserted	Claims (% of NCFL Claims)
1.	Level 1.5 Neurocognitive Impairment	74 (52%)
2.	Level 2 Neurocognitive Impairment	66 (46%)
3.	Alzheimer's Disease	3 (2%)
4.	Total	143

We received the first of these claims on May 12, 2017, and the last on October 19, 2017, with 47 claims coming in May, 28 in June, 54 in July, nine in August, three in September and then two in October. There have been no new claims from them since October 2017. There are no claims for ALS, Parkinson's, or Death with CTE. All the NCFL claims rest on Level 1.5, Level 2 and Alzheimer's diagnoses made before the January 7, 2017 Effective Date of the Settlement Agreement, meaning they were not made by Qualified BAP Providers or Qualified MAF Physicians. Though 182 of NCFL's 188 registered Players are eligible for the BAP, the firm has submitted BAP paperwork and set up a BAP baseline assessment for only one Player, who has yet to be examined. The firm has not received any Level 1.5 or Level 2 diagnoses in the BAP. Nor has it submitted any claims based on an examination by a

² We treat a law firm's client information as confidential to that firm and its clients, except as we are permitted to share it with the Court, the Special Masters, the Parties, the Trustee and the Lien Resolution Administrator. We do not make public statements about how many clients a particular firm has or what has happened to their claims. Here, we need to explain these facts to move through the door opened by NCFL in its motions, in which it describes the firm's claims in some detail and alleges nothing has been done with them.

Qualified MAF Physician. The firm has not sent in any Derivative Claims on behalf of family members of any Players.

Information on Players and their claims is confidential. We do not disclose it publicly or to anyone not authorized to receive it by the Settlement Agreement, the Court's Orders, or consent from the Player. Our Audit proceedings are conducted in private among the Special Masters, the Parties and the Settlement Class Members affected by an Audit Report, along with their lawyers if they are represented. Our Audit Reports are not filed in the public record of this Court. Normally, we do not discuss the Audit investigations of a firm's claims in this public forum. The accusations NCFL makes in its Partial Joinder, which it filed in the Court's public docket, require us to do so here. Nonetheless, we have de-identified the names of the NCFL physicians and Players involved.

NCFL used six neurologists on its 143 claims, as listed in Table 3:

Table 3		DIAGNOSING PHYSICIANS USED BY NCFL	
	Physician	City	Number of Claims
1.	Doctor 1	Tampa	52
2.	Doctor 2	Tampa	25
3.	Doctor 3	Tampa	49
4.	Doctor 4	Tampa	12
5.	Doctor 5	Houston	3
6.	Doctor 6	Tampa	2
7.	Total		143

All but two of the 143 diagnoses were made in 2016: April (19), May (29), June (24), July (15), August (28), September (10), October (nine), November (five) and December (two); the other two diagnoses were made in June and December of 2015.

While five of the physicians used by NCFL are in Tampa and one is in Houston, the Players these physicians diagnosed live in 26 states, with 76 in Florida and eight in Texas:

Table 4	STATES OF RESIDENCE OF NCFL CLIENTS	
	State	Number of Players
1.	Alabama	5
2.	Arkansas	1
3.	Arizona	3
4.	California	2
5.	Colorado	1
6.	Delaware	1
7.	Florida	76
8.	Georgia	11
9.	Idaho	1
10.	Illinois	3
11.	Kentucky	1
12.	Louisiana	1
13.	Maryland	1
14.	Michigan	1
15.	Missouri	3
16.	Mississippi	2
17.	North Carolina	9
18.	New Jersey	1
19.	Nevada	1
20.	Ohio	1
21.	Pennsylvania	3
22.	South Carolina	3
23.	Tennessee	1
24.	Texas	8
25.	Washington	2
26.	Wisconsin	1
27.	Total	143

C. The Audit Process Under the Settlement Agreement.

1. Relevant Provisions of the Settlement Agreement.

Sections 10.3(c) and 10.3(d) of the Settlement Agreement require us to Audit:

- (1) 10% of the total Claim Packages or Derivative Claim Packages we have found to qualify for Monetary Awards or Derivative Claimant Awards during the preceding month. We select these Claim Packages at random and are required to audit at least one Claim Package, if any qualify, per month.
- (2) Claims seeking a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player took part in the BAP within the prior 365 days and was not diagnosed with that Qualifying Diagnosis during the BAP baseline assessment examination.
- (3) Claims for a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player submitted a different Claim Package within the prior 365 days based upon a diagnosis of that same Qualifying Diagnosis by a different physician and that Claim Package was found not to qualify for a Monetary Award.
- (4) Claims reflecting a Qualifying Diagnosis made through a medical examination conducted at a location other than a standard treatment or diagnosis setting.

Those are not our only audit duties. Sections 10.3(b) and 10.4 of the Settlement Agreement mandate that we, in consultation with the Parties, establish and implement procedures and system-wide processes to detect and prevent fraud.

2. The Audit Procedure and the Audit Rules.

To implement that mandate, in coordination with the Parties and Special Masters we developed an internal Audit Procedure, which the Parties first approved on December 12, 2016, and Rules Governing the Audit of Claims (“Audit Rules”), which the Special Masters adopted as effective on January 26, 2018. The Audit Rules are posted on the [Settlement Website](#) to detail how the Audit process works. Under Audit Rule 7, we are to audit specific claims or groups of claims and investigate information we receive from Co-Lead Class Counsel or the NFL Parties (the “Parties”). Since the Audit process began, we have regularly

reported to the Parties and the Special Masters on the Audit investigations underway and their status.

Pursuant to Sections 10.3(b) and 10.4 of the Settlement Agreement, we look at various “red flags” to detect potential fraud. The Parties approved the red flags on December 12, 2016, based on Section 10.4 of the Settlement Agreement: (1) alteration of documents; (2) questionable signatures; (3) duplicative documents submitted on claims; (4) the number of claims from similar addresses or supported by the same physician or office of physicians; and (5) data metrics indicating patterns of fraudulent submissions. The Parties approved amendments to the red flags on July 24, 2017. We continue to refine and add to the matters that arouse suspicion about the legitimacy of a claim or group of claims, but have not posted these publicly, for doing so would provide a road map to persons on how to avoid triggering them and the scrutiny that would result.

We also receive tips about potential fraud, which often are the best leads on claims that are of doubtful veracity. The Settlement Website allows anyone to report potential fraud to us (<https://www.nflconcussionsettlement.com/ReportFraud.aspx>). We research information from each tip to determine its credibility and decide whether we have reason to place claims in Audit while we investigate it further.

3. How an Audit Starts.

If we put a claim in Audit, we notify the Settlement Class Member (through his lawyers, if represented) and the Parties under Audit Rule 9 and under Audit Rule 8 suspend all claims processing and appeal deadlines during the pendency of the Audit. If the claim ends up being closed because of what we find in the Audit, this spares the Settlement Class Member, the Parties, the Special Masters and the administrators of wasted effort on the

claim. In the Notice of Audit, we do not provide a specific reason on why the claim is in Audit. The best practices approach to assessing the reliability of claim submissions makes such investigations confidential. For example, the Association of Certified Fraud Examiners (“ACFE”) warns in its Fraud Examiners’ Manual (2016 US Edition, Section 3.144):

Fraud investigations must be structured to preserve confidentiality. If confidentiality issues are not given attention from the outset of the investigation, the details of the investigation might become public, compromising the entire investigation. Additionally, if the details of the investigation do not remain confidential, employees will be reluctant to report future incidents. Also, if an investigation is not kept confidential, and the allegations giving rise to the investigation prove unsupported, the reputations of those suspected of misconduct might be irreparably damaged. Moreover, if an investigation stems from a complaint and the complaint becomes known, it is possible that the complainant could be retaliated against.

Section 3.145 of the ACFE Manual also advises:

When responding to a sign or allegation of fraud, those responsible must work to avoid tipping off those suspected of fraud. If the suspect is inadvertently informed of the investigation, a number of different adverse events might occur. For instance, the fraudster might attempt to destroy or alter evidence, making it more difficult to conduct the investigation. When investigation details are leaked, concealment and destruction of evidence typically occurs at a faster rate.

Additionally, a forewarned suspect might attempt to flee, cut off contact with associates, or try to place the blame on somebody else.

Because unintentionally notifying the fraudster is a key concern in any investigation, the confidentiality of the internal investigation is critical. To avoid tipping off those suspected of misconduct, it is important to have information about the person who is being investigated and what he can access. Also, to maintain confidentiality, determine in advance who should receive information about the investigation and reevaluate who should receive information as the investigation proceeds.

In our experience over the years, we have found this is the best practice for making these inquiries effective.

4. The Goal of an Audit Investigation.

Sections 10.3(g) and 10.3(j) of the Settlement Agreement and Audit Rule 12 require us to determine whether there is a reasonable basis to support a finding that there has been a misrepresentation, omission, or concealment of a material fact made in connection with a claim. Audit Rule 12 sets this out in detail:

Rule 12. Standard of Proof Applied by the Claims Administrator.

- (a) Standard of Proof: If the Claims Administrator determines there is a reasonable basis to support a finding that there has been a misrepresentation, omission or concealment of a material fact made in connection with a Claim by the Settlement Class Member, the Claims Administrator will report the Claim to the Parties and then refer it to the Special Masters as permitted by these Rules. This standard applies to all Audits by the Claims Administrator, including those under Section 10.3(j) of the Settlement Agreement concerning possible fraud in connection with a Claim.
- (b) Fraudulent Intent Not Required: This standard of proof does not require the Claims Administrator to determine whether the misrepresentation, omission or concealment was intentional.
- (c) Materiality: A fact is material if it did affect or has any potential to affect whether the Settlement Class Member qualifies for a Monetary Award, Supplemental Monetary Award or Derivative Claimant Award and/or the amount of such award in favor of the Settlement Class Member under the provisions of the Settlement Agreement.

If we conclude there is not a reasonable basis for a finding of misrepresentation, omission, or concealment, we remove the claim from Audit and issue a notice to the Settlement Class Member advising him or her that we have concluded the Audit and will continue processing the claim, pursuant to Audit Rule 14. If, however, we find there is a reasonable basis for a finding of misrepresentation, omission, or concealment, under Audit Rule 15 we issue to the Parties a Report of Adverse Finding in Audit, explaining what we found and the remedies we feel are appropriate. Audit Rule 16 gives Co-Lead Class Counsel and the NFL Parties 30 days from the Report to decide whether they agree with us that it should be referred to the Special Masters for review. If either Party consents to the referral, we send the Report to the Special

Masters, after which each Party has 20 days under Audit Rule 17 to submit their statements of position to the Special Masters. After all this process, if the Special Masters decide to accept the referral, we follow Audit Rule 19 and send the affected Settlement Class Members (or their lawyers) a notice of the referral and a copy of the Audit Report, with such redactions needed to avoid disclosing to lawyers confidential information about Settlement Class Members they do not represent, or to a Settlement Class Member information about other Settlement Class Members. Then the affected Settlement Class Members and their lawyers have 30 days under Audit Rule 20 to submit a memorandum to the Special Masters in response to the Audit Report, along with exhibits and additional evidence in support of their positions. Rule 24 gives the Special Masters discretion to require or permit oral argument on a referred Report.

The Special Masters will determine whether the Settlement Class Members or other parties subject to the Audit Report have established that there is no reasonable basis to support a finding that there has been a misrepresentation, omission, or concealment of a material fact made in connection with a claim by the Settlement Class Member and may find such misrepresentation, omission, or concealment was intentional (Audit Rule 28). The Special Masters may remand claims to us under Audit Rule 29; dismiss the proceeding under Audit Rule 30; or under Audit Rule 31 deny the claims, require additional audits, refer the matter to the appropriate disciplinary boards or federal authorities, direct re-examination of a living Retired NFL Football Player or review of the medical records of a deceased Retired NFL Football Player by a Qualified BAP Provider or by a Qualified MAF Physician, disqualify the lawyer, law firm, claims service, or healthcare provider, and/or Settlement Class Member(s) from the Program, and/or order other relief that the Special Masters may deem appropriate. Claims are not closed after an Audit unless the Special Masters agree with our findings and direct us to do so.

5. Our Powers of Investigation in an Audit.

Section 10.3(e) of the Settlement Agreement grants us the authority to require Settlement Class Members to submit additional records and information to us, including a list of all the Player's health care providers for the past five years and NFL employment records, as well as allowing us to obtain medical records from all the Player's doctors. Audit Rule 10 sets out this investigative authority, which is essential to any effective process for investigating suspicious claims and sources of claims in a settlement program, and bestows upon our requests for records or information in connection with an Audit the force and effect of a subpoena under Fed. R. Civ. P. 45:

Rule 10. Required Information and Records. The Claims Administrator may require a Settlement Class Member, within 90 days or such other time as necessary and reasonable under the circumstances, to submit to the Claims Administrator such records and information as may be necessary and appropriate to audit the Claim of the Settlement Class Member, including the records and information described in Sections 10.3(e) and 10.3(f) of the Settlement Agreement. The Claims Administrator also may require persons and entities other than the Settlement Class Member to submit such records and information within 90 days or such other time as necessary and reasonable under the circumstances. Any request by the Claims Administrator for records or information in connection with an Audit will have the force and effect of a subpoena under Fed. R. Civ. P. 45 and may be served by any means that will cause the recipient to receive it. The Claims Administrator has the authority to take testimony, issue follow-up requests for information and records, and/or obtain additional materials and information pursuant to Fed. R. Civ. P. 45 as it deems reasonably necessary to complete the Audit.

Section 10.3(d) of the Settlement Agreement allows audited Settlement Class Members 90 days, or such other time we determine necessary and reasonable, to respond to a request for information in an Audit. If a Settlement Class Member refuses to cooperate with an Audit, including by unreasonably failing or refusing to obtain and provide us with all the records and information sought within the time we specified, Section 10.3(b)(ii) of the Settlement Agreement and Audit Rule 11 gives us the authority to deny the claim, without right to appeal.

6. Seeking Information from a Player's Physician in an Audit.

A key issue in nearly every Audit investigation is whether the diagnosing physician's stated diagnosis of the Player's condition, to which the physician certifies under penalty of perjury on the Diagnosing Physician Certification Form he or she signs for submission to us in a Monetary Award Claim Package, is based on or contains any misrepresentations or omissions of material fact. Thus, a significant aspect of an Audit investigation is trying to discern how the physician reached that conclusion, any external factors affecting his or her perspective or incentives, whether the information relied upon and given to us is reliable and genuine, and other factors bearing on the reliability and integrity of the diagnosis asserted, remembering that we are not required to find that a misrepresentation or omission was made with fraudulent intent.

Unfortunately, we have found that many of the Pre-Effective Date claims for neurocognitive impairment—Level 1.5, Level 2 and as an element of Alzheimer's Disease—have attributes that cast doubt on the legitimacy of the claims. We have questions about such facts, including:

- 1) The physician's methodologies and testing protocols;
- 2) Represented results;
- 3) Possible bias or influence;
- 4) Use or non-use of neuropsychological testing;
- 5) Disregard of results inconsistent with the diagnosis rendered or perhaps preferred;
- 6) Failure to do necessary testing;
- 7) Disregard of facts regarding the Player's functional and mental capacities;
- 8) The apparently planned omission of tests or consideration of facts that would lead to a lower claim value or no Qualifying Diagnosis at all;
- 9) Performing diagnoses in high volumes and in numbers physically impossible to accomplish in the time allowed;
- 10) Swearing reliance on evidence that did not exist until a later date;
- 11) Reports showing identical vital signs and scores on many different Players;

- 12) Financial incentives to render payable diagnoses;
- 13) Players traveling great distances to see a particular physician—often a high-volume one—rather than being examined by the neurologists and neuropsychologists where the Player lives;
- 14) Diagnosing physicians finding abnormally high percentages of Players with Level 1.5 or Level 2 conditions among all those who saw the doctor;
- 15) Tips to us that Players are being coached by their lawyers or other Players on how to secure a Qualifying Diagnosis; and
- 16) Tips that lawyers have “guaranteed” a Qualifying Diagnosis from their chosen physicians if a Player hires that lawyer.

Our Audit investigations are designed to explore these issues and assess the integrity and reliability of a claim before the Settlement Fund issues payments of up to \$5,000,000 per claim in the face of such circumstances.

All of this obviously requires us to try to get information and records from the diagnosing physician. Paragraph 7 of the Confidentiality Order (Document 7324) entered by the Court for this Program allows us to provide otherwise confidential Claims Information on a Settlement Class Member to a person who may have relevant documents or information necessary for verification of a claim for the investigation of potential fraud under Sections 10.3 and 10.4 of the Settlement Agreement. We must contact doctors who are the subject of our Audits to ask questions during our investigations. Otherwise we have no way to assess the doctor’s methodology and the accuracy and reliability of a diagnosis to determine whether the doctor engaged in misrepresentation, omission, or concealment, or perhaps was misled by a lawyer, the Player, or someone else as to the Player’s true condition. We may need to ask general questions of the doctors, Player-specific questions regarding medical histories or diagnoses, or both.

This is a major reason these Audit investigations require time to finish. Our goal is to start and conclude an Audit in no more than 90 days, though on many claims we can dispel our concerns much more quickly than that and return the claim to normal claims processing.

This Motion strikes at the heart of an Audit investigation. NCFL says its Motion is by a “group of former NFL player-claimants” it represents, but does not identify those Players. Paragraph 2 states that “an attorney representing two board-certified neurologists in Tampa, Florida has notified the undersigned that the Claims Administrator engaged in ex parte interviews with his physician clients about the evaluation and treatment of some former NFL players who are participating in the concussion settlement.” We have heard ourselves from one lawyer in Tampa, as explained below.

17
JA8820

amount to a “governmental intrusion” into a Player’s “private life” under the Florida state Constitution (para. 9).³ NCFL also worries that such questions may “have a chilling effect on the willingness” of these doctors and others to “participate in the claims process in the future” (para. 15).

None of these arguments has even facial validity. Most can be addressed quickly. As reviewed above, the Settlement Agreement approved by the Court, the Confidentiality Order entered by the Court and the Audit Rules approved by the Special Masters authorize us to request—and even require—physicians to provide us information and medical records. Audit Rule 10 and Section 10.3(e) of the Settlement Agreement allow us to use a 90-day response time “or such other time as necessary and reasonable under the circumstances.” It is odd that a law firm complaining about the time their claims have been in Audit would want us to allow doctors more than 90 days to get back to us with the information we need to do the Audit. As the Claims Administrator, we are not the government. Nothing we do is a “governmental intrusion” on anyone. And the case cited for the proposition that “one federal court” was concerned about interviewing a litigant’s treating physician, *In Re: Vioxx Products Liability Litigation*, 230 F.R.D. 470, 473 (E.D. La. 2005), concerned a defendant’s contact with the plaintiff’s treating physicians during discovery in litigation and has nothing to do with an audit being done to prevent fraud in a settlement program. Indeed, we administered the \$4.5 billion settlement of the Vioxx litigation, which was supervised by the same district judge who issued that order, and there we conducted audit investigations of physicians as we are doing here, with the full approval and endorsement of that court.

³ HIPAA is the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, codified at 42 U.S.C. § 300gg, 29 U.S.C. § 1181 *et seq.* and 42 USC 1320d *et seq.*

This brings us to HIPAA. According to the U.S. Department of Health and Human Services, an entity that does not meet the definition of a covered entity or business associate does not have to comply with the HIPAA Rules (<https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>). We are not a covered entity subject to HIPAA. A covered entity, as that term is defined in 45 C.F.R. § 160.103, includes a health plan, a health plan clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a covered transaction (*i.e.*, a transaction for which a standard has been adopted, as outlined in 45 C.F.R. Part 162). As the Claims Administrator in this Settlement, we do not provide or pay the cost of medical care. Nor are we a billing service, repricing company, community health management information system, or community health information system. We do not provide medical or health services or furnish, bill, or get paid for health care in the normal course of business and are not a business associate of a covered entity, as we do not provide data transmission services with respect to protected health information to any covered entity, offer a personal health record to one or more individuals on behalf of a covered entity, or create, receive, maintain, or transmit protected health information as a subcontractor and on behalf of a business associate to a covered entity.

While we do communicate with physicians who choose to participate in the Program by evaluating and diagnosing Players with Qualifying Diagnoses and such physicians likely are covered entities subject to HIPAA, much of the information we ask them is not protected health information under HIPAA and thus can be shared without Player consent. Where we do seek protected health information from such physicians, the physician must decide whether disclosure is permitted under HIPAA, but there are several reasons why a physician could reasonably conclude it is permitted where the Player whose information is to be released had sufficient

the scores assigned to their clients by the neuropsychologists involved in their claims. The relief they seek has nothing to do with the Locks Law Firm; instead they want to thwart the audit of claims and have their claims relieved from Audit scrutiny, saying we have been solely on a “fishing expedition” (Partial Joinder at p. 6) and have “taken little or no action to investigate” their claims. (*Id.* at p. 5.) That forces us to explain in this public forum why their claims are in Audit and what we have done with them.

2. Audit Investigations of NCFL Claims.

There are 131 NCFL claims in one or more Audit investigations; because of the entanglements among the neurologists and neuropsychologists the firm uses, a claim often is affected by more than one investigation. We have issued the firm notices on every one of those claims, telling the firm and the Settlement Class Member they are in Audit.

Our concerns about NCFL claims have a long history. On August 11, 2017, we received tips from two anonymous sources, naming two neurologists (to whom we refer in this Response as Doctor 1 and Doctor 2) and stating they had (1) performed evaluations at the offices of a law firm in Florida, which if true would lead to a mandatory Audit under Section 10.3(d) of the Settlement Agreement; (2) rendered Qualifying Diagnoses to every Player they had seen; and (3) used questionable techniques in making their diagnoses. We immediately began an in-depth review of claims from those neurologists, who are two of the diagnosing physicians used by NCFL. This resulted in a wider concern about claims from NCFL sponsored by suspect neurologists and neuropsychologists. Because NCFL argues none of its claims belong in Audit and nothing has been done with them, we summarize all our efforts on these investigations.

3. Doctor 1 and Doctor 2.

Doctors 1 and 2 work together at the same practice in Tampa. NCFL submitted 84 claims relying on diagnoses from one of these doctors, both of whom were the subject of the two anonymous tips. Sixty-nine of the 84 claims with diagnoses from Doctors 1 or 2 relied on neuropsychological testing by an also suspect group of neuropsychologists, which in this Response we call Neuropsychologist Group A and discuss in more detail below.

We sent a sample of claims from Doctor 1 and Doctor 2 to an AAP member for medical review. On February 5, 2018, the AAP sent us a report that the ratings used by these doctors on the Clinical Dementia Rating scale (the “CDR”), which is a required measure of functional impairment under Ex. 1 to the Settlement Agreement, were inconsistent with and did not reflect either the history information in the doctor’s own notes, history information in the neuropsychology notes, and/or the information in the third-party affidavits submitted on the claims. We then began trying to talk with these two doctors by phone. We review this in detail here, as what transpired with Doctors 1 and 2 is indicative of why these Audits take time:

- (1) We called Doctor 2’s office on February 12, February 14 and February 15, 2018, usually getting a busy signal. We called a total of seven different times. We finally were able to speak with Doctor 2 on February 16, 2018. We did not ask him about any specific Players when we spoke to him, but we did ask him general information about how he became involved with the Program, when he first started seeing the Players (whether it was before or after the Settlement), what law firm(s)/lawyer(s) he worked with, whether his office worked with any other third parties to schedule appointments, how many Players he evaluated, his relation to Doctor 1, how many Players Doctor 2 saw, where he saw the Players (whether he went to them or they came to him), if he did any remote evaluations, whether he reviewed any records of the Players that he saw and if he applied to be a Qualified MAF Physician in the Program. He denied performing examinations outside of his offices.
- (2) We made eight attempts to talk to Doctor 1, on February 19, 20 and 26, 2018. On February 19, 2018, we called twice and got busy signals both times. On February 20, 2018, we called two more times. During the first call we were told to call back for his assistant after 4:00 p.m. We did that but were told his

assistant was not there and we could try to reach her the next day between 2:30 and 6:00 p.m.

- (3) On February 26, 2018, we called four times. We received busy signals for the first two calls; the third time we were told to call back at 3:30 p.m. for the assistant. On the fourth call, we were able to reach the assistant, who scheduled a phone conference for us to talk to Doctor 1 on February 28, 2018 at 2:30 p.m. She also gave us a second phone number we could use if we got a busy signal.
- (4) On February 28, 2018, we spoke to Doctor 1 by phone, but he requested that we send him questions in writing and promised he would call us that day or the next to give us his answers. We emailed questions to him that day. He responded to confirm he received our email. He did not call us again after that, so we followed up with him by email on March 1, 2018 but did not receive a response. We followed up with him by email again on March 5, 2018, but he did not respond. We also called his office three times that day but were not able to connect with his assistant.
- (5) On March 8, 2018, we called Doctor 1's office four times and emailed him once. After getting two busy signals, we finally spoke with someone who agreed to take a message for his assistant, and we asked that the assistant call us back or ask Doctor 1 to respond to our questions.
- (6) On March 12, 2018, Doctor 1 emailed us and said "sorry that I have been unable to response. [sic] I have been off due to my own surgery and have been recuperating. Still researching the questions and will call you today or tomorrow. Thank you, Doc." We responded, thanking him.
- (7) Having not yet heard back from him afterwards, we emailed him on March 13, 2018, asking if he was available to talk. Later that day, we emailed him written questions about six Players he evaluated and three Players, his colleague, Doctor 2 examined. On March 15, 2018, Doctor 1 faxed us responses to our written questions from February 28, 2018.
- (8) On March 16, 2018, we emailed Doctor 1 to confirm we received his March 15, 2018 fax. In that email, we also asked him to let us know if he had received the second set of questions we sent him on March 13, 2018.
- (9) On March 19, 2018, Doctor 1 emailed us saying that he received our messages, and he asked that we send our questions, which he said he would answer as best he could.
- (10) On March 21, 2018 we faxed to Doctor 1 the names of the Players in our second set of questions. We also emailed the questions to him again with Player-specific information de-identified. We asked for responses from him and his colleague by noon on March 26, 2018, warning that if we did not receive those responses, we may have to deny the claims resting on their diagnoses.

(11) On March 23, 2018 we received an email from John C. Hamilton, a lawyer in Tampa, Florida, saying Doctor 1 had contacted him about our requests for information.⁵ He asked who we represent; said Doctor 1 was busy and the deadlines were unfair; asked about HIPAA authorizations; and asked “why have you not offered to pay [Doctor 1] an expert fee for the services you are seeking?” We responded that day describing our role as the Claims Administrator and pointing him to the Audit Rules on the Program website. He emailed us again on March 25, 2018, arguing that we were placing the doctors in the position of violating the Florida Constitution, demanding again that we pay the doctors for responding to our questions, saying that our deadlines for the doctors to respond were unreasonable, asking “what is the rush?”, arguing that our requests should be brought before a court authority and requesting that we send all HIPAA releases to him, though he also said “I am not a HIPAA expert.”⁶

At that point, we decided it was fruitless to pursue things with Doctor 1 and Mr. Hamilton further. Hagglng with Mr. Hamilton over the legitimacy of our questions and whether we had to pay for answers threatened delaying the completion of our Audit on Doctor 1 for weeks, if not months. We determined we had enough information to conclude our Audit without engaging in that debate any longer and ceased our efforts to get answers from Doctor 1. We never heard from Doctor 1 or Mr. Hamilton again.

As we had to proceed with what we had, on March 30, 2018, we issued to the Parties a Report of Adverse Finding under Audit Rule 15 regarding Doctors 1 and 2, finding there is a reasonable basis for a finding of misrepresentation, omission, or concealment of a material fact in their claims. Doctors 1 and 2 assigned CDR scores that were inconsistent with the Players’ functional abilities; provided the exact same score across all three relevant areas of the CDR for 79 of the 84 claims using their diagnoses; and Doctor 1 submitted affidavits in support of six Players whose claims rest on diagnoses from a neurologist who we recommended disqualifying in a Report of Adverse Finding in Audit that the Special Masters

⁵ Mr. Hamilton sent us the identical email that day about Doctor 3, who is discussed later in this Response.

⁶ Again, we got the identical email that day from Mr. Hamilton about Doctor 3.

accepted for referral on March 26, 2018. Those sorts of entanglements among the neurologists used by NCFL have added to our concern over the legitimacy of their claims operation.

4. Neuropsychologist Group A.

There are 118 NCFL claims (81% of the firm's claims) that use neuropsychological testing by Neuropsychologist Group A, a firm located in Tampa, Florida. On August 4, 2017, we sent a sample of these claims to a Court-appointed neuropsychologist on the AAPC for review. On August 24, 2017, the AAPC neuropsychologist recommended that we obtain the raw test scores from Neuropsychologist Group A because of doubts over the validity of the diagnoses.

We asked Neuropsychologist Group A for the raw scores for 62 Players, which they have been sending to us over time. On November 22, 2017, after receiving raw scores for 12 Players from Neuropsychologist Group A, we sent an additional sample of five claims to the AAPC neuropsychologist for review. We received the AAPC neuropsychologist's opinion on three of the five claims on December 17, 2017, and on the remaining two claims on January 10, 2018. After reviewing the AAPC neuropsychologist's opinion and reviewing Neuropsychologist Group A's answers to questions about their T-Score calculations, we concluded the Audit of this provider and notified the Parties on February 2, 2018, that based on what we had at the time, we would not issue an Adverse Audit Report. We continue, however, to monitor the findings of AAPC neuropsychologists as they review these NCFL claims in the claims process and are researching the veracity of the testing methods and scoring of Neuropsychologist Group A.

5. Neuropsychologist B.

One of NCFL's claims is connected to Neuropsychologist B, who is in Houston, Texas. On August 23, 2017, an AAPC neuropsychologist expressed concerns to us regarding Neuropsychologist B's interpretation of validity measures, where he had found that a Player who had failed all validity indicators yet also considered the results of the evaluation a valid assessment of the Player's functioning. We then began an Audit of claims using testing by Neuropsychologist B. On September 13, 2017, we sent a sample of claims to an AAPC neuropsychologist for review. On September 18, 2017, the AAPC neuropsychologist reported to us that the diagnoses in the neuropsychological reports were of questionable accuracy and should be viewed with caution.

On October 5, 2017, we sent Neuropsychologist B several questions to explore the reliability of his methodologies. Neuropsychologist B told us he would answer our questions, but gave us various excuses over time for not responding, including that he was moving offices. Finally, on January 23, 2018, he sent to us responses and asked for the names of the Players involved in two of our questions. We sent him those names on February 2, 2018; he responded further on February 26, 2018. We sent both his responses to the AAPC neuropsychologist and got that analysis back on March 12, 2018. Based on it, we determined there is a reasonable basis for a finding of misrepresentation, omission, or concealment in claims done by Neuropsychologist B because he: (1) substituted tests from the Settlement Agreement test battery in Exhibit A-2 with more difficult tests, making it more likely that the Player would fail and appear to have neurocognitive impairment; (2) systematically disregarded failed scores on validity measures that indicate the Player may be malingering; (3) used poor judgment when he continued to test a Player who displayed

severe psychiatric symptoms; and (4) diagnosed 32 Players with Level 2 Neurocognitive Impairment who reported that they were working, which is not consistent with a Level 2 diagnosis. We issued a Rule 15 Report of Adverse Finding to the Parties on March 30, 2018, suggesting denial of the 70 claims from Neuropsychologist B, including the NCFL one. The Parties have until April 30, 2018, to tell us whether they agree to refer the Audit Report to the Special Masters under Rule 16(a).

6. Doctor 3.

We investigated another neurologist used by NCFL, “Doctor 3,” because we saw suspicious data patterns in his claims and he relied heavily on neuropsychological examinations from Neuropsychologist Group A, one of the entanglements that cause concern over paying these claims. NCFL submitted 49 claims using diagnoses from Doctor 3. We sent a sample of Doctor 3’s claims to an AAP member on February 19, 2018, who told us on March 5, 2018, that Doctor 3 was not considering alternative causes of cognitive and functional decline and that his assignment of CDR scores was not reliably consistent with other reports of the Players’ daily functions or the published qualitative scoring standards.

We have communicated with Doctor 3 four times. On March 14, 2018, we spoke with Doctor 3 by phone and asked him the general questions about how he first became involved in the Program, when he first started seeing the Players (whether it was before or after the Settlement), what law firm(s)/lawyer(s) he worked with, whether his office worked with any other third parties to schedule appointments, how many Players he evaluated, how many Players he saw, how many Players for whom he rendered Qualifying Diagnoses, where he saw the Players, if he did any remote evaluations, what his experience was with Neuropsychologist Group A, why he applied to be a BAP and MAF physician, and what his experience was with

evaluating neurocognitive impairment before seeing Players for the Program. We also told him we would send some Player-specific questions.

On March 16, 2018, we emailed Doctor 3 questions about seven Players he had evaluated. On March 19, 2018, he emailed us saying that he would be glad to answer any questions we had after we sent him signed authorization forms. We faxed HIPAA forms for five of the seven Players to him that day, along with the names of the Players who were the subject of our questions. On March 20, 2018, we emailed him about the HIPAA forms we faxed for five Players the previous day and told him to answer our questions by March 26, 2018, only for those five Players for whom we sent HIPAA forms.⁷

On March 23, 2018, we received the email from the lawyer, Mr. Hamilton, about Doctor 3, identical to his email that same day about Doctor 1, and then on March 25, 2018, got the same email from him on Doctor 3 he sent that day on Doctor 1, asking for compensation and making his other arguments. By then, we already had sent HIPAA releases for the five Players directly to Doctor 3 and asked him to answer our questions regarding those five Players only. We have not heard from Doctor 3 or Mr. Hamilton since.

7. Player A.

Player A at one time was represented in this Program by a law firm other than NCFL. While he was represented by that firm, Player A was evaluated by a neuropsychologist and a neurologist on March 28, 2014, and March 31, 2014, respectively, which was before the Settlement Agreement was announced in July 2014. The neuropsychologist assigned a score of .5 on the CDR to Player A, which the CDR Scoring Table calls “Questionable;” the neurologist gave him a 0 diagnosis, which is “None” under the CDR measure of impairment.

⁷ We have received signed HIPAA Audit forms from 43 of the NCFL clients in Audit.

But then Player A terminated that firm and switched to NCFL. On June 8, 2015, we received an email from Kelly Deal at Gibbs and Parnell, one of the NCFL member firms, stating that the firm “now represents” Player A.

Neuropsychologist Group A met with Player A on July 1, 2015, a little over a year after the March 28, 2014 neuropsychological exam while Player A was represented by his first law firm. Doctor 1, the neurologist, saw Player A on April 20, 2016. In the Monetary Award claim from NCFL for Player A submitted to us on July 25, 2017, the Diagnosing Physician Certification Form signed by Doctor 1 asserted Level 2 Neurocognitive Impairment. We received a tip about Player A that there had been previous examinations finding no Qualifying Diagnosis while he was with another law firm, which is how we then found the medical records from the 2014 exams. We then put Player A in audit.

Player A is very active writing posts on Facebook, almost daily. On January 28, 2018, he gave a 17-minute long radio interview, during which he had no apparent trouble speaking. He has posted on Facebook on January 29, 2018, that he is publishing a book regarding his personal life. He had mentioned that book in his radio interview. On March 3, 2018, he posted on Facebook about relaunching his foundation.

We sent a Notice of Audit of Claim to NCFL for Player A on December 5, 2017, asking for the names of all health care providers he had seen in the last five years. NCFL responded to that Notice on January 4, 2018, listing 14 medical providers. But the doctors who had evaluated Player A in 2014 and found no Qualifying Diagnosis were not on that list.

8. Complaints by NCFL in the Partial Joinder.

The details above concerning why NCFL claims are in Audit make clear that we have not “abused” the Audit process simply to delay payment on the firm’s claims and

demonstrate why these Audit investigations consume considerable time. The rest of the

Partial Joinder hardly needs rebuttal, but for the sake of completeness we offer the following:

- (a) **Three Claims for Alzheimer’s Disease:** The AAP reviewed and denied all three of these claims made by NCFL after finding numerous inconsistencies in the test results, disregard of functional capabilities, improper assessment of cognitive function and other medical issues.
- (b) **Audit is Not Limited to Mandatory Audits:** NCFL argues that the only Audits we can do are the four categories of mandatory audits in Section 10.3(c) of the Settlement Agreement. That completely ignores the rest of Section 10.3, including the directive in Section 10.3(b) that we “establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund,” as well as the Audit Rules adopted by the Special Masters. This Program surely would suffer raiding by unscrupulous persons if we could investigate only 10% of the claims beyond their facial submissions.
- (c) **Claims Can and Must be Audited at Any Time:** The Settlement Agreement and the Audit Rules adopted by the Special Masters allow us to audit claims at any time in the claims process, even after they are paid. Artificially limiting Audits to the period before a denial or before payment would severely undercut our ability to safeguard the Program from inflated and false claims. We regularly find suspicious data patterns across claims, get tips and see questionable conduct in claims from the same source as our claim reviews progress and must be able to stop ineligible payments whenever we can find them.
- (d) **An Audit Must Suspend Claims:** The Audit Rules adopted by the Special Masters suspend processing deadlines while a claim is in Audit. This too is a best practice, avoids wasted claims effort and is essential to prevent money leaving the Settlement Fund on misrepresented claims. While we regret that NCFL lawyers had to work “over the holiday season” on claim appeal papers due on January 12, if a claim is found not to have misrepresentations, the appeal process will resume and thereafter all parties will have their full rights under the Appeal Rules adopted by the Special Masters.
- (e) **No Violation of Due Process:** We explained above how persons auditing the integrity of claims try to avoid tipping off the suspects of what they need to cover up, get rid of, or arrange common explanations for to avoid detection in the Audit. Settlement Class Members and their lawyers are told their claims are in Audit. If the Special Masters accept referral of an adverse Audit Report, the Settlement Class Members and their lawyers are given details on why their claims were found unreliable and have a full chance to be heard by the Special Masters. This fair process serves the due process concepts of notice and opportunity to be heard, even though the claims administrator in a settlement program is neither the federal government subject to the 5th Amendment nor a

state government bound by the 14th Amendment to the United States Constitution.

III. CONCLUSION

For the foregoing reasons, the Claims Administrator submits that NCFL's Motions should both be denied. To preserve the integrity of the Program and ensure that only valid claims based on reliable diagnoses are paid out of the Monetary Award Fund, we ask that we be permitted to follow the Audit procedures in the Settlement Agreement and Audit Rules adopted by the Special Masters.

Respectfully submitted,

BROWNGREER PLC

By: /s/ Orran L. Brown, Sr.
Orran L. Brown, Sr.
Virginia State Bar No. 25832
BrownGreer PLC
250 Rocketts Way
Richmond, Virginia 23231
Telephone: (804) 521-7201
Facsimile: (804) 521-7299
Email: obrown@browngreer.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record through the Court's ECF system on April 9, 2018.

/s/ Orran L. Brown, Sr.
Orran L. Brown, Sr.
Virginia State Bar No. 25832
BrownGreer PLC
250 Rocketts Way
Richmond, Virginia 23231
Telephone: (804) 521-7201
Facsimile: (804) 521-7299
Email: obrown@browngreer.com

SEEGERWEISS LLP

April 11, 2018

Via ECF

Honorable Anita B. Brody
United States District Judge
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

Re: *In re National Football League Players' Concussion Injury Litigation*,
No. 12-md-2323-AB

Dear Judge Brody:

In accordance with the Memorandum Opinion and Order that the Court issued on April 5, 2018 [ECF Nos. 9860, 9861], I respectfully submit the attached proposed order, authorizing the Fund Administrator to pay the approved incentive awards to the three Class Representatives and to reimburse Class Counsel and other firms that performed common benefit work for common benefit costs and expenses from the Attorneys' Fees Qualified Settlement Fund, and directing the recipients of funds to cooperate with the Fund Administrator to effectuate the order.

I thank the Court for its consideration of this submission.

Respectfully,

/s/ Christopher A. Seeger
Christopher A. Seeger
Co-Lead Class Counsel

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing, along with the attachment, was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: April 11, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**CO-LEAD CLASS COUNSEL'S RESPONSE TO THE YERRID
LAW FIRM AND NEUROCOGNITIVE FOOTBALL LAWYERS'
MOTION TO REVIEW DEPRIVATION OF APPEAL RIGHTS**

Co-Lead Class Counsel, Christopher A. Seeger, hereby responds to The Yerrid Law Firm and Neurocognitive Football Lawyers' Motion to Review Deprivation of Appeal Rights. For the reasons set forth below, as well as for those reasons set forth in the Claims Administrator's Response to Motion to Prohibit Ex Parte Interviews with Treating Doctors and Partial Joinder to

the Motion Brought by the Locks Law Firm Filed by Neurocognitive Football Lawyers, LLC Lawyers (Document No. 9870), the motion should be denied.

BACKGROUND

As a procedural matter, the pleading filed by The Yerrid Law Firm (“YLF”) and Neurocognitive Football Lawyers (“NCFL”) on March 30, 2018 (Document 9843) is entitled “The Yerrid Law Firm and Neurocognitive Football Lawyers’ (1) Partial Joinder to the Motion Brought by the Locks Law Firm for Appointment of Administrative Counsel, (2) Motion to Review Deprivation of Appeal Rights and (3) Requesting Oral Argument.” However, despite its title, the document filed by YLF and NCF provides no substantive discussion or support for its “partial joinder” in Locks’ Motion. Rather, YLF and NCFL’s filing deals exclusively with their Motion to Review Deprivation of Appeal Right. Accordingly, this response is limited to that motion. To the extent that any response is necessary to YLF and NCFL’s partial joinder in Locks’ Motion, that response can be found in Co-Lead Class Counsel’s Opposition to the Motion of The Locks Firm for Appointment of Administrative Class Counsel and all Joinders thereto, being filed today.

This motion is not YLF and NCFL’s first attack on the Claims Administrator’s use of the audit process. The same firms filed a Motion to Prohibit Ex Parte Interviews with Treating Physicians (Document No. 9815) on March 26, 2018. Co-Lead Class Counsel filed its opposition to that motion on April 9, 2018 (Document No. 9869). While that motion will be decided on its own merits, Co-Lead Class Counsel references that motion because of a striking similarity it has with the current motion. Both motions reveal YLF and NCFL’s ignorance of the audit process as provided for in the Amended Settlement Agreement and the Special Master’s Rules Governing the Audit of Claims, as well as the Claims Administrator’s use of its clear authority to conduct such audits.

ARGUMENT

Virtually every complaint made by YLF and NCFL in their motion stems directly from their fundamental misunderstanding of the Amended Settlement Agreement and/or the Special Master's Rules Governing the Audit of Claims. Specifically, throughout their motion, YLF and NCFL mistakenly take the position that the Claims Administrator's right to audit claims is derived solely from Section 10.3(c) of the Amended Settlement Agreement, which reads:

(c) On a monthly basis, the Claims Administrator will audit ten percent (10%) of the total Claim Packages and Derivative Claim Packages that the Claims Administrator has found to qualify for Monetary Awards or Derivative Claimant Awards during the preceding month. The Claims Administrator will select such Claim Packages and Derivative Claim Packages for auditing on a random basis or to address a specific concern raised by a Claim Package or Derivative Claim Package, but will audit at least one Claim Package, if any qualify, each month.

YLF and NCFL believe that the only claims subject to possible audit by the Claims Administrator are those claims that have already been approved for a Monetary Award, and even then that the Claims Administrator can audit only 10% of that population on a monthly basis.

YLF and NCFL simply ignore several other relevant sections of the Amended Settlement Agreement and the Rules Governing the Audit of Claims promulgated by the Special Masters. Specifically, they ignored Sections 8.6(b), 10.3(b), 10.3(j) and 10.4 of the Amended Settlement Agreement.

Section 8.6(b) provides:

(b) The Claims Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim Package or Derivative Claim Package documentation, including, without limitation, as set forth in Section 10.3.

There is no limitation in this section as to the types of claims that the Claims Administrator can investigate. YLF and NCFL also ignore Sections 10.3(b) and 10.4 of the Amended Settlement

Agreement. Those two sections are closely related so it makes sense to view them together.

Section 10.3(b) states, in relevant part, that:

(b) In addition, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator will establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund. Among other fraud detection and prevention procedures, the Claims Administrator, with the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, will institute the following procedures relating to claim audits:

...

Section 10.4 provides:

The Claims Administrator, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, will also establish system-wide processes to detect and prevent fraud, including, without limitation, claims processing quality training and review and data analytics to spot “red flags” of fraud, including, without limitation, alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.

Again, it is hard to imagine someone reading these two sections and concluding, as YLF and NCFL apparently did, that the only claims subject to possible audit are 10% of those claims found to qualify for Monetary Awards. Rather, as noted above, the Amended Settlement Agreement requires the Claims Administrator to “establish and implement procedures to detect and prevent fraud” without regard to a claim’s status in the process. Are YLF and NCFL taking the position that the Claims Administrator should turn a blind eye to potential fraud in claims that have not yet been reviewed for possible Monetary Award, and/or to those claims that were found not to qualify for Monetary Award? If so, that position flies in the face of common sense and the language of the Amended Settlement Agreement and the Rules Governing the Audit of Claims, and would needlessly delay meritorious claims while resources are consumed conducting merits review of

claims that may not survive an audit. Why would the Amended Settlement Agreement require the Claims Administrator to “establish a system-wide process to detect and prevent fraud” but not allow the Claims Administrator to audit the very claims identified by that process?

If it is not yet clear that the Claims Administrator’s authority to audit claims is not solely derived from Section 10.3(c), as alleged by YLF and NCFL, Section 10.3(j) resolves the issue once and for all. Sections 10.3(j) states:

(j) In addition, if the Claims Administrator at any time makes a finding (based on its own detection processes or from information received from Co-Lead Class Counsel or Counsel for the NFL Parties) of fraud by a Settlement Class Member submitting a claim for a Monetary Award or Derivative Claimant Award, and/or by the physician providing the Qualifying Diagnosis, including, without limitation, misrepresentations, omissions, or concealment of material facts relating to the claim, the Claims Administrator will notify the Settlement Class Member and will make a recommendation to Co-Lead Class Counsel and Counsel for the NFL Parties to refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings that may include, without limitation, those set forth in Section 10.3(i).

There is nothing ambiguous about the language of 10.3(j). First, it uses the phrase “at any time”, so the Claims Administrator’s authority to conduct audits is not specifically limited to those claims that have already been approved for a Monetary Award. Similarly, the phrase “submitting a claim for a Monetary Award or Derivative Claimant Award” indicates that the Claims Administrator has the authority to conduct audits of claims that have been submitted, but not yet approved, for a Monetary Award.

As detailed above, YLF and NCFL simply fail to understand that the Amended Settlement Agreement and the Rules Governing the Audit of Claim do not limit the Claims Administrator’s authority to audit only claims to only those that have been approved for Monetary Award. Their failure to understand that fact is the genesis of almost every complaint in their motion.

Those complaints raised in YLF and NCFL's motion that do not directly stem from their failure to understand that the Claims Administrator is not limited in the types of claims they can audit, are nonetheless without merit since they are based on other misunderstandings of the Amended Settlement Agreement. For example, YLF and NCFL complain that their players who have had their claims denied are being deprived of their appellate rights because the Claims Administrator is auditing their claims. That is simply not true. As stated in Rules 8 and 14 of the Rules Governing the Audit of Claims, when a claim is placed into audit, all of the claims processing deadlines are suspended wherever the claim is at that time in the review, appeal or payment process. If the audit is completed without the Claims Administrator determining that there is a reasonable basis to support a finding of a misrepresentation, omission, or concealment of a material fact in connection with that claim, the claim is removed from audit and it continues in the process. So, if the claim was under appeal when placed into audit, the appeal process would resume with relevant deadlines adjusted accordingly, and with all parties having their full appellate rights. Those players are not being deprived of any appellate rights.

YLF and NCFL also complain about the appeal process, separate and apart from the audit process. Specifically, YLF and NCFL complain that the Rules Governing Appeals of Claim Determinations do not allow for the submission of "new matters." That claim is without merit. To begin with, the phrase "new matters" is not used in the appeal rules cited in the motion. Co-Lead Class Counsel believes that YLF and NCFL are actually referring to "new evidence" as that phrase is used in the appeal rules at issue. In any event, Rule 23 allows the Special Master to accept "new evidence" (i.e. evidence that was not originally submitted with the Claims Package and, therefore, not considered in the review of that claim) in the appeal process. Again, YLF and NCFL are mistaken.

CONCLUSION

For the foregoing reasons, as well as for the reasons stated in the Claims Administrator's Response to Motion to Prohibit Ex Parte Interviews with Treating Doctors and Partial Joinder to the Motion Brought by the Locks Law Firm Filed by Neurocognitive Football Lawyers, LLC Lawyers, The Yerrid Law Firm and Neurocognitive Football Lawyers' Motion to Review Deprivation of Appeal Rights should be denied. The Claims Administrator's authority to conduct audits, as provided for in the Amended Settlement Agreement and the Rules Governing the Audit of Claims, is not limited to those situations stated in Section 10.3(c).

Dated: April 13, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Fl
Ridgefield Park, New Jersey 07660
Phone: (212) 584-0700
Fax: (212) 584-0799

Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I, Christopher A. Seeger, hereby certify that a true and correct copy of the foregoing response was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: April 13, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**OPPOSITION OF CO-LEAD CLASS COUNSEL
CHRISTOPHER A. SEEGER TO MOTION OF THE LOCKS FIRM
FOR APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

I. INTRODUCTION

Co-Lead Class Counsel Christopher A. Seeger (“Co-Lead Class Counsel” or “Seeger Weiss”) respectfully submits this opposition to the Motion of Class Counsel the Locks Firm (“Locks”) for Appointment of Administrative Class Counsel (“Locks Motion”) (ECF No. 9786) and all Joinders thereto.¹

¹ The list of firms that have joined in the Locks Motion are Anapol Weiss (“Anapol”) (ECF No. 9839); Berkowitz and Hanna LLC (“Berkowitz”) (ECF No. 9855); Casey, Gerry, Schenk,

As the foundation for its request, Locks raises a series of purported issues and complaints about the Settlement that, as to those for which there is some basis (as to many, there is none), Seeger Weiss has been addressing or has addressed long before the Locks Motion was filed. Indeed, since well before the Effective Date, Seeger Weiss has worked to create an administrative framework designed to run for decades and to treat all Settlement Class Members uniformly, whether the Members are applying for Monetary Awards based on pre-Effective Date diagnoses in the first two years of the Settlement or on a Qualifying Diagnosis in the 65th year of the Settlement. Locks may have many individually-retained clients, but it is Seeger Weiss that firms and unrepresented Settlement Class Members have consistently turned to when they have faced issues respecting the Settlement.

It is Seeger Weiss who has engaged with the Claims Administrator, the Special Masters, and the NFL in implementing the Settlement. As such, most notably, after an opportunity for comment by Locks and others, an entirely new set of Frequently Asked Questions were promulgated in February 2018 (“FAQs” or “February FAQs”) as rules of the road, which address most of the issues Locks now raises publicly and seeks to exploit. *See* Declaration of Orran L.

Francavilla, Blatt & Penfield, LLP (“Casey Gerry”) (ECF No. 9830); FrancoLaw PLLC and Hodgins Law Group, LLC (“Franco”) (ECF No. 9828); Goldberg, Persky & White, P.C. (“Goldberg Persky”) (ECF No. 9827); The Law Office of Hakimi & Shariari (f/k/a Top NFL Lawyers) (“Hakimi”) (ECF No. 9829); Hagen Roskopf LLC (“Hagen”) (ECF No. 9853); Hausfeld LLC (“Hausfeld”) (ECF No. 9816); Kreindler & Kreindler, LLP (“Kreindler”) (ECF No. 9842); Lubel Voyles, LLP (“Lubel”) (ECF No. 9856); McCorvey Law, LLC (“McGorvey”) (ECF No. 9821); Mitnick Law Office (“Mitnick”) (ECF No. 9834); Podhurst Orseck, PA (“Podhurst”) (ECF No. 9831); Pope McGlamry, Kilpatrick, Morrison & Norwood, PC (“Pope McGlamry”) (ECF No. 9813); Provost Umphrey, LLP (“Provost”) (ECF No. 9819); Smith & Stallworth, PA (“Smith & Stallworth”) (ECF No. 9854); JR Wyatt Law, PLLC (“Wyatt”) (ECF No. 9836); Neurocognitive Football Lawyers (“Yerrid” or “Neurocognitive Lawyers”) (ECF No. 9843); Zimmerman Reed LLP (“Zimmerman”) (ECF No. 9820). Two firms, Lieff Cabraser Heimann & Bernstein, LLP (ECF No. 9824) and Robins Cloud LLP (ECF No. 9837), filed and then withdrew Joinders to the motion.

Brown, Sr. on Program Implementation (ECF No. 9882) (“Brown Decl.”) ¶ 24. The Joinders from other counsel (through the use of a declaration template or even thinner “me too” Joinders) do little or nothing to buttress what is an utterly meritless attempt to usurp Co-Lead Class Counsel’s oversight of the Settlement’s implementation. Indeed, many of the Locks Motion’s complaints stem from the fact that, although he signed it, Locks has repeatedly ignored (or manifested an ignorance of) the Settlement Agreement. For the reasons discussed below, the Court should deny the Locks Motion.

II. BACKGROUND & SUMMARY

This Settlement is an unprecedented accomplishment – providing immediate baseline assessments to eligible players, Monetary Awards for those Retired NFL Football Players who had already received a Qualifying Diagnosis, and 65 years of security to Retired NFL Football Players who may develop one or more of the Qualifying Diagnoses in their lives. Contrary to the rhetoric coming from Locks and the Joinders in support of its motion, one should make no mistake – the Settlement is working, albeit not perfectly. As a Settlement without precedent, it took some time to resolve the many issues attendant to the scope of the Settlement benefits offered.

A. The Success of the Settlement

On April 9, 2018, Seeger Weiss as Co-Lead Class Counsel hosted the 88th regular weekly implementation call with the Claims Administrator (Brown Greer), the BAP and Lien Resolution Administrator (Garretson Resolution Group), and counsel for the NFL. *See* Declaration of Christopher A. Seeger in Support of Opposition of Co-Lead Class Counsel to Motion of the Locks Firm for Appointment of Administrative Class Counsel (“Seeger Decl.”) ¶ 4. These calls became the central platform for coordinating implementation of the Settlement and were accompanied by other *ad hoc* calls and communications focused on particular tasks or problems. *See* Brown Decl.

¶ 23; Seeger Decl. ¶ 4. Each aspect of the Settlement required, among other things, the development of the basic documents that were to be used to register and submit a claim; the establishment of national networks of physicians and medical providers that would serve as Qualified MAF Physicians and BAP Providers; and the institution of policies that would regulate the operations of the Claims, BAP, and Lien Resolution Administrators. *See* Seeger Decl. ¶ 4. Even before the first of regular weekly calls, Co-Lead Class Counsel was engaged with the Administrators and NFL to begin addressing the innumerable details that this Settlement entails. *See id.* ¶ 5. As will be discussed in more detail below, Seeger Weiss used the many tools available under the Settlement Agreement, including the appeals process and petitions to the Special Masters to shape a program that is delivering the promised benefits to the Settlement Class Members.

As of April 9, 2018, the Settlement has already offered or scheduled 3,650 BAP examinations with over 2,400 players having already completed at least one appointment. *See* Declaration of Matthew L. Garretson (ECF No. 9883) (“Garretson Decl.”) ¶¶ 15-17, 25. Thus far, BAP examinations have already led to the diagnosis of 51 players.² 377 Notices of Monetary Awards have been sent to Settlement Class Members, reflecting \$411,237,005 in awards, and this number is growing on a daily basis. *See* Brown Decl. ¶ 33. As Locks points out in the Locks Motion, the NFL had forecast that claims in the first year of the Settlement would amount only to \$242.9 million. Locks Motion ¶ 10. At the close of the first year of the MAF, the Notices of Monetary Awards are already exceeding that projection, and claims that were submitted in the first

² The BAP provides the same baseline assessment to all eligible players, the majority of whom (fortunately) do not suffer from the serious neurocognitive impairments that constitute qualifying dementia diagnoses under the Settlement. During the first two years of the program, most Monetary Awards will be based on pre-Effective Date diagnoses.

year are still being approved.³ *See* Seeger Dec. ¶ 6. The Qualifying Diagnoses for Alzheimer's and dementia (Level 1.5 and Level 2 Neurocognitive Impairment) have been a prime focus for complaints. These too, however, are being awarded. Over 192 Notices of Monetary Awards for these Qualifying Diagnoses of Alzheimer's or dementia have gone out for a value of over \$202 million. *See* Seeger Decl. ¶ 7. Indeed, now that the many claims requiring further investigation by the Claims Administrator have been identified and distinguished from the others, there has been a marked increase in the approval of these claims since February. *See id.*

Importantly, since the Locks Motion was filed, 53 new Notices of Monetary Award have been sent to Settlement Class Members, representing over \$63 million in awards, and 45 more payments have been made, totaling over \$34 million. *Id.* ¶ 9.

B. Locks Has Been, if Anything, a Hindrance

For some, it seems, the process just was not quick enough and never will be. Locks sits like a Monday morning quarterback making a list of do-able prescriptions *that are already implemented* and a list of complaints and actions that are simply at odds with the Settlement

³ Locks contends that the Settlement has not even reached first year projections, but does so by myopically focusing only on the checks that have been sent out rather than the larger number of claims that have been submitted during the first year, including those that are continuing to be approved and will be paid in the coming months. While there are many claims that have been submitted in the first year that have not yet been reviewed on the merits, given the Notices of Monetary Awards that have already been issued, it is clear that the Settlement is on track to deliver in excess of the projections for the first five years. The data is available on the Settlement Website (www.NFLConcussionSettlement.com) and reflected on April 9, 2018 that the Settlement has already exceeded the projected numbers of ALS claims (28 awards with only 17 projected), Parkinson's claims (61 awards with 14 projected), and Death with CTE claims (61 awards with 51 projected). There have also been 115 Alzheimer's claims, 43 Level 2.0 claims and 71 Level 1.5 claims approved. With over 881 claims for Alzheimer's and/or dementia from the first year of the MAF still pending decision, it is evident that these projections too will be exceeded. *See* Seeger Decl. ¶ 8.

Agreement and good sense. Distinctly lacking in the Locks Motion is candor about Locks' earlier involvement in the implementation process and resolution of many of the issues that it now raises.

Co-Lead Class Counsel involved Locks in the implementation process for a year and a half and has repeatedly addressed their complaints as they arose. Seeger Weiss sought input from Locks, along with the other Class Counsel, on everything from the basic forms that were to be used for registration and the claims process, the procedures that would govern fraud investigations, to the medical providers who would serve in the national MAF and BAP networks, and the neurologists and neuropsychologists who would sit on the Appeals Advisory Panel ("AAP") and serve as Appeals Advisory Panel Consultants ("AAPC"). *See* Seeger Dec. ¶ 20. Indeed, two of the current members of the AAP and AAPC were originally proposed by Locks. *See id.* ¶ 21. Co-Lead Class Counsel hosted calls and in person meetings, and exchanged many emails with Class Counsel in this process which continued up until less than two weeks before Locks filed its Motion. *See id.* ¶ 20. Class Counsel were free to raise issues and they were always apprised of the work that was being undertaken to address these issues.

Similarly, Locks points to its November 6, 2017 memorandum to the Claims Administrator ("November Memo") to argue that its efforts leading up to the filing of the Locks Motion have been ignored. (Locks Motion ¶¶ 50-51). What Locks omits from his recitation to the Court, however, is that the Claims Administrator shared the November Memo with Seeger Weiss which swiftly prepared a reply to Locks addressing each of the complaints raised. *See* Seeger Decl., Exhibit B. As Seeger Weiss pointed out to Locks, some of the complaints in the November Memo evidenced ignorance of or hostility toward express provisions in the Settlement Agreement. Seeger Weiss also explained to Locks that the other complaints were matters that Seeger Weiss was already addressing through appeals, or through other means with the NFL and Special

submitted in the course of briefing the Common Benefit Fee Petition and proposed allocations. (ECF Nos. 7141-2, 7464-1, and 8447). For the purposes of the present motion, several of the accomplishments by Seeger Weiss require particular attention and address many of the ill-considered claims made by Locks and some of the firms joining in the motion about the failure of the Settlement Program under Seeger Weiss' leadership. Seeger Weiss has successfully shepherded the Settlement through implementation in the interest of the Settlement Class.⁴

As an unprecedented undertaking where measures of neurocognitive impairment are in play, the Settlement presented challenges in initial implementation, and the commencement of benefits required substantial undertakings. This can be easily illustrated by the need to establish and train two national networks of physicians and a Monetary Award program that will be in operation for 65 years. Importantly, the awards are sizeable, ranging up to \$5 million. Given the Settlement program's uncapped structure, to secure the integrity of the Settlement, Seeger Weiss further needed to appropriately balance and address the potential for unfounded claims while protecting the rights and claims of otherwise worthy Settlement Class Members. As the

⁴ In addition to these sorts of global undertakings for the Settlement Class Members, Seeger Weiss has an intimate and sophisticated relationship with the workings of the Settlement program. Seeger Weiss has individual clients, but, as Co-Lead Class Counsel is often the go-to source for unrepresented Settlement Class Members who need guidance. Similarly, Co-Lead Class Counsel is tracking each Notice of Monetary Award and Notice of Denial of Monetary Award to ensure their accuracy and to identify issues that may need to be addressed in the wider Settlement program. This process has, for example, led to the identification of missing Eligible Seasons or the use of the wrong age of a player in the calculation of Monetary Awards for certain claims, and corresponding increases in dollars received by Class Members. Finally, Co-Lead Class Counsel tracks each appeal that is taken by either Settlement Class Members or the NFL. This allows Seeger Weiss to identify issues that have wider ramifications in the Settlement and may need to be addressed by a Statement of Co-Lead Class Counsel in support of the Settlement Class Member. Also, Seeger Weiss works very closely with Settlement Class Members who are facing the appeals process to help them prepare the best submission that they can—either for their own appeal or to oppose an appeal by the NFL. *See* Seeger Decl. ¶ 19. Accordingly, Locks' statement that Seeger Weiss lacks "day to day incentive to engage in aggressive advocacy on behalf of players" is baseless. Locks Motion ¶ 60(f).

implementation continued under the leadership of Seeger Weiss, the Settlement has come to deliver the negotiated benefits to the Settlement Class. Among the points on which Seeger Weiss provided leadership are the following.

A. The Earlier Date for a Qualifying Diagnosis⁵

The question of determining the date of a Qualifying Diagnosis had been an issue from the beginning of the claims process. The issue is significant because once a player reaches the age of 45, his monetary award decreases every year. A difference of even one year can translate into a substantial difference in the amount of a Monetary Award. The NFL's position was, and still is, that the earliest the date of diagnosis can be is the date that the diagnosing physician first personally examined the player. It was Co-Lead Class Counsel's position, however—as reflected in briefing for the Special Masters on the issue—that diagnosing physicians, based on their personal examination of the player, as well as a review of that player's existing medical records, may properly determine that the player suffered from a Qualifying Diagnosis on a date earlier than the initial personal examination by the diagnosing physician, and that the diagnosing physicians should be able to use that earlier date if they think that it is appropriate. The Special Masters accepted Co-Lead Class Counsel's position in the FAQs that they promulgated in early February 2018. Specifically, FAQ 93 allows physicians to use their “sound clinical medical judgment” to determine that the player's diagnosed conditions “existed at a date earlier than the date of personal examination of the Player by the physician making the diagnosis and signing the DPC [Diagnosing Physician Certification (“DPC”) (i.e., medical certification)] form.” *See* Seeger Decl. ¶ 13.

B. MAF Physicians' Ability to Rely on Historic Neuropsychological Records⁶

⁵ This matter directly addresses the issue raised in the Hausfeld Joinder. ECF No. 9816.

⁶ This matter addresses the issue raised in the Locks Motion in ¶ 41.

The Settling Parties had differing views as to whether Qualified MAF Physicians could rely on historic neuropsychological testing when making a dementia diagnoses (Level 1.5 and Level 2), or whether they were required to send the player for new neuropsychological testing. This testing included earlier neuropsychological testing for one of the NFL benefit plans, such as the 88 Plan. The NFL's position was that a Qualified MAF Physician could rely only on neuropsychological testing that was conducted at the direction of the Qualified MAF Physician. Seeger Weiss advocated through submissions before the Special Master to recognize and respect the medical judgment of the Qualified MAF Physicians and enable them to rely on historic neuropsychological testing if they found it to be reliable, particularly when the testing was part of one of the NFL benefits plans. The Special Masters accepted this position and FAQ 102 now gives the Claims Administrator the discretion "to decide whether to accept neuropsychological testing from other sources based on the unique facts and circumstances of a particular claim" so long as it is less than 12 months old. Similarly, FAQs 93 and 111 permit the use of earlier neuropsychological testing under the 88 Plan or another NFL benefit plan. *See id.* ¶ 14.

C. Ensuring Fairness and Efficiency While Seeking the Production of Raw Scores⁷

The NFL's position was that the raw scores from the player's neuropsychological testing must be provided in order for a claim to be complete. Failure to provide the raw scores would result in the claim being denied. Although Seeger Weiss recognized the potential relevance of raw scores in assessing a claim, Co-Lead Class Counsel further maintained that it would be unfair to penalize a player by denying his claim simply because his neuropsychologist is unable to provide raw scores or delaying the processing of his claim pending such production. The Special Masters

⁷ As regards the Locks Motion and Joinders, this undertaking among many directly addresses the shared concern that the Settlement work as swiftly and efficiently as possible and without undue delay.

At the heart of the Settlement benefits is the “Eligible Season,” which stands as a proxy for exposure to concussive and sub-concussive hits. The number of Eligible Seasons is thus a key driver in the amount of a Monetary Award and drives a Retired NFL Football Player’s eligibility for participation in the BAP. A full Eligible Season is earned for each year that a Retired NFL Football Player was on the Active List for at least three games. The NFL, however, took the rigid position that uninjured players who were listed as “inactive” on game day would earn nothing toward an Eligible Season, even though they were shoulder-to-shoulder in practice all week with all of the other Active List players. As the Court is aware, Seeger Weiss advocated for parity in treatment of all Retired Players on the Active List up to game day. After Seeger Weiss prevailed on behalf of the Settlement Class Members before the Special Master (ECF No. 9713), the NFL filed objections to the Special Master’s Ruling in this Court (ECF No. 9754-1). The Court overruled that objection, making the final and binding determination that the more reasonable (and expansive) definition of “Active List” should apply (ECF No. 9754). This victory has already resulted in a substantial increase in at least one Monetary Award and has increased the number of players eligible for the BAP. *See id.* ¶ 18.

These and many other accomplishments by Seeger Weiss were known to Locks and the other Class Counsel who joined in the Locks Motion. Yet no mention is made of these facts in the Locks Motion or any of the Joinders. Seeger Weiss included Class Counsel (including Locks, Anapol and Podhurst) in the implementation process, including regular calls for open discussions of on-going Settlement implementation issues as they arose. *See id.* ¶ 20. They were asked for input on the fundamental forms to be used in the claims process, in proposing candidates and in review of candidates’ credentials for the BAP and MAF networks, as well as for the AAP. *See id.* Indeed, in the regular calls that Seeger Weiss began to host with the other Class Counsel, the

above-mentioned issues, and the status, positions, and arguments being made in support of the players were all discussed.

IV. LOCKS IS NOT FIT FOR THE PROPOSED ROLE OF “ADMINISTRATIVE CLASS COUNSEL”

How would this Settlement function if the interests of the Class were turned over to Locks as its guardian? This is not merely a hypothetical to be debated. Locks once served as a trustee for the Dalkon Shield Settlement Trust. Within eight months, however, he was removed as a trustee “for good cause.” *In re A.H. Robins Co.*, 880 F.2d 779 (4th Cir. 1989). The list of Locks’ “acts of misfeasance and improprieties” exposed at a trial on the matter included:

- Negligent failure to act prudently and expeditiously in setting up the Claims Resolution Facility;
- Endeavoring to hire a costly consulting firm to conduct his responsibilities;
- Opposition to supervision by the Court for the protection of the claimants;
- Failure to deliver a single payment for claims;
- Defiance of the Court;
- Protracted and wasteful efforts to appoint as counsel for the Settlement Trust a firm that had a direct conflict of interest;
- Ignorance of key provisions in the Trust Agreement;
- Inability to work with fellow trustees and others involved in administration of the Trust;
- Placing the interests of the claimants second to his own which lead to a “thwart[ing of] the law of the case and expended time, effort and Trust funds for that purpose to the ultimate delay and detriment to the Trust beneficiaries”; and
- Otherwise delivering no services for the salary paid from the Trust.

Id. at 781-85. The Fourth Circuit affirmed Locks’ removal as Trustee, noting that the “delays occasioned by the three trustees [including Locks] ha[d] increased administrative costs, ha[d] delayed full funding of the Trust . . . and ha[d] endangered the very life of the plan.” *Id.* at 787.

Similarly, in the *Diet Drugs* litigation, the one litigation that he identifies as establishing his credentials, Locks was ensnared in litigation over the handling of client settlement proceeds, particularly regarding an alleged practice of secretly withholding 10% of clients’ settlement funds to short referring counsel and as a reserve fund to remold objecting clients’ settlement amounts.

Morris v. Greitzer and Locks of N.J., LLC, No. A-4672-06T3, 2009 WL 2525452, at ** 3, 5, 6 (N.J. Super. Aug. 20, 2009).

Apt to the appointment that Locks now seeks and the general tone of his motion, the Fourth Circuit in *Dalkon Shield* noted Locks' braggadocio in the face of his troubling ignorance of the very agreement that he was supposed to oversee: "Mr. Locks testified that he was not aware of this provision of the merger agreement. He was also unaware that under § 4.07(c) of the Trust Agreement if the Order of Confirmation were reversed on appeal, the \$100,000,000 already paid into the Trust could no longer be used to compensate claimants. Mr. Locks testified that he was an experienced attorney in mass tort litigation, but months after he became a trustee of one of the largest trusts ever created, he was unfamiliar with critical provisions of the documents making up the Plan of Reorganization."¹⁰ *In re A.H. Robins Co.*, 880 F.2d at 787 n.2.

Locks holds up his duties as Class Counsel under Section 28.1 of the Settlement Agreement as the basis for his requested appointment as Administrative Class Counsel. Locks Motion ¶ 5. There is no such thing, however, as "Administrative Class Counsel." The Settlement Agreement establishes a clear hierarchy of leadership for implementation of the Settlement, with Co-Lead Class Counsel atop that hierarchy, with duties for implementation expressly assigned throughout the Settlement Agreement and Class Counsel (including Subclass Counsel) providing support in the implementation. *See, e.g.*, Settlement Agreement §§ 2.1(r) and (u), *passim*. There is no provision for an "Administrative Class Counsel." The parties never negotiated for, nor did the Court approve, such a position. Rather, Co-Lead Class Counsel is primarily responsible for all aspects of implementation. *See, e.g.*, Settlement Agreement §§ 4.1 (notice and information to the

¹⁰ Like in *Dalkon Shield*, Locks has frequently demonstrated ignorance about basic terms of the Settlement Agreement he signed. This is discussed in greater detail below, but instances include most notoriously signing-off on over 28 assignments of client benefits.

Class), 5.6 (BAP creation and retention and oversight of BAP Administrator), 8.2 (claims process), 9.1 (review of Claims), 9.8 (appointment of AAP and AAPC), 10.2 (MAF creation and retention and oversight of Claims Administrator), 11.1 (retention and oversight of Lien Resolution Administrator), 23.5 (creation of Settlement Trust).

In addition, Locks overlooks the importance of the common duty that Section 28.1 of the Settlement Agreement establishes for Co-Lead Class Counsel and Class Counsel to support the Settlement:

Co-Lead Class Counsel and Class Counsel acknowledge that, under applicable law, their respective duty is to the entire Settlement Class, to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the Settlement Class.

Since the Effective Date, rather than “respect, support, and effectuate” the Settlement Agreement, Locks has actively undermined it and has repeatedly shown ignorance of some basic features of the Settlement and the wider implementation efforts.

A. Locks’ Deficiencies

Although he touts the “approximately 1,100 registered players” that he represents, Locks’ handling of those cases does not advance his cause. Locks Motion ¶ 5(b). Locks boasts that he “has filed 102 claims, and obtained 35 awards to date” (*Id.*) (a fact that actually undermines Locks’ position, in that it demonstrates that the Settlement is working), but neglects to mention that, notwithstanding the Settlement Agreement’s clear prohibition on the assignment of settlement benefits (Section 30.1 – “No Assignment of Claims”) – about which this Court is well versed (*see, e.g.*, ECF No. 9517) – Locks has acknowledged and signed off on at least 28 funding agreements

that assigned all or part of 16 of its clients' claims.¹¹ *See* Seeger Decl. ¶ 30. In all, these known assignments relate to over \$1.5 million in advances to these players, which when the exorbitant interest rates are applied, would have resulted in these Class Members owing funders double or more the amounts advanced. *See id.* The interest rates presented in the assignment agreements are deceptive in that they are monthly and not annual rates, with monthly compounding. Some of the underlying interest rates are as high as 2.75%. *See id.* While this may seem like a low interest rate on its face, with monthly compounding, the rate translates to an effective annual interest rate in excess of 38% for the first year, and grows exponentially in subsequent years.¹²

In 2016, Locks' deficiencies resulted in a complaint filed in this Court by several players against it and several other of the Joinder firms. The plaintiffs alleged that they had been "represented by [Locks] in the NFL concussion class action litigation, but terminated their attorney-client relationship with [Locks] . . . due to dissatisfaction for various reasons."¹³ Since the filing of that action, Seeger Weiss in its role as Co-Lead Class Counsel, like the Claims Administrator, receives calls from Locks' clients on a regular basis (far more than other firms'

¹¹ Most of these assignments were identified by Seeger Weiss in the course of its investigation of the funders who entered into prohibited assignments with players. As the Court is aware, the discovery in that matter has been limited, and even those funders that have been identified have yet to produce information about their funding agreements with players. There could very well be far more assignments acknowledged by Locks. *See id.*

¹² For example, if a Class Member received an advance of \$100,000 in April of 2016, at a 2.75% monthly compounded interest rate, now, two years later, he would owe the funder over \$191,000—almost double the amount advanced. Should the retired player not obtain a Qualifying Diagnosis and corresponding monetary award until April 2019, he would owe the funder over \$265,000. *See id.*

¹³ *Sayers v. Hausfeld, LLP*, 2:16-cv-2005-AB, ECF No. 1 at ¶ 2. The other firms named alongside Locks whose clients had the same "dissatisfaction" and have also joined in the Locks Motion are Hausfeld, Zimmerman, and Pope McGlamry.

clients), relating to concerns or complaints about Locks' representation, most typically that Locks is simply not returning their calls.¹⁴ *See* Seeger Decl. ¶ 31.

B. Locks' Undermining of the Settlement

After the Settlement became effective, Locks quickly undermined confidence in the program by spreading inaccuracies about its implementation. As the Court is aware, a Settlement Class Member, Fred Willis, principal of HPN Neurologic and a client of Locks, has been sending around misrepresentations about the Settlement ever since it became effective. *See e.g.* ECF Nos. 7151, 7842. Mr. Willis maintained a Settlement-related blog ("NFL Players Brains Matter") and sends regular blast emails to an expansive list of Settlement Class Members about the Settlement. Even before the BAP launched in June 2017, Mr. Willis sent out the following May 2017 alert that the BAP was being delayed. The alert was based on information received from "one of the top Law firms in the NFL Concussion Settlement":

NFLPLAYERS BRAINS MATTER™

UPDATE

The NFL Concussion Lawsuit

The Baseline Assessment Examination

Based on a recent email received from one of the top Lawfirms in the NFL Concussion Settlement the Baseline Assessment Program may be delayed. In their email they expressed the numbers of former players who will need to be tested and the limited schedules available for the baseline testing providers (i.e. board-certified neuropsychologists and neurologists), the BAP administrator has determined that many of the tests will be delayed for 6-12 months

¹⁴ Locks' pre-Effective Date performance was not much better. Early in the settlement negotiations, when he was on the settlement committee, Locks saw fit to reach out to the press and talk about the status of the litigation despite an agreement of confidentiality. The Locks "leak" needlessly compromised and delayed negotiations, while Co-Lead Counsel worked to restore Plaintiffs' credibility. *See id.* ¶ 34.

(or more, in some instances).

**BASED ON THIS INFORMATION IT APPEARS POSSIBLE IT COULD EASILY
TAKE 6 MONTHS TO 1 YEAR (OR LONGER) BEFORE YOU WILL BE SCHEDULED
FOR TESTING WITH A BAP DOCTOR, THUS POSSIBLY STRETCHING ANY
MONETARY AWARD YOU MIGHT RECEIVE FROM THE CONCUSSION
SETTLEMENT EVEN LONGER!**

See Seeger Decl., Exhibit C.

Seeger Weiss learned that the misinformation that Mr. Willis spread, at least in this instance, came directly from Locks, “one of the top Lawfirms.” The content of Mr. Willis’ message was lifted directly from an email that he received from Locks: “As you likely know, the settlement requires baseline testing to begin in June. Because of the numbers of former players who will need to be tested and the limited schedules available for the baseline testing providers (i.e. neuropsychologists and neurologists), the administrator has determined that many of the tests be delayed for 6-12 months (or more, in some instances).” *See* Seeger Decl., Exhibit D.

There was no plausible basis for Locks’ statement. Locks’ statement to Mr. Willis and Mr. Willis’ parroting of it were and remain untrue. Despite the success of Co-Lead Class Counsel in driving BAP registration numbers beyond even the most optimistic of projections, the BAP launched *on time*, and appointments were scheduled immediately thereafter, typically within 36 days of contact. *See* Garretson Decl. ¶ 15.

Not only does Locks’ email to Mr. Willis raise concerns about other misinformation that Locks may have spread, it also manifests Locks’ profound ignorance of the Settlement Agreement itself. Creating even more confusion with the communication to Mr. Willis and his hundreds of other clients, Locks went on to misrepresent that a delay in BAP evaluations would impact diagnoses of Parkinson’s disease, ALS, and Alzheimer’s disease: “Our files indicate that you are

not in immediate distress and if tested, likely would not be diagnosed with a compensable condition (dementia, Alzheimer's, ALS or Parkinson's). Therefore delaying your test will not affect your settlement benefits and we recommend that you follow the request of the administrator. We will look to schedule your exams in the near future." *See id.* It is a fundamental fact that the BAP is focused solely on evaluating a player's neurocognitive abilities, and can be the basis for a claim for one of the dementia diagnoses, not any of the other Qualifying Diagnoses.

V. THE ISSUES RAISED IN THE LOCKS MOTION LACK MERIT

The Locks Motion reflects the same sort of misapprehensions or outright ignorance of the very Settlement Agreement that he now seeks appointment to oversee. Putting aside Locks having signed off on *at least* 28 assignments of his clients' claims in contravention of the Settlement Agreement (discussed above), Locks now argues that the very BAP testing battery that he signed off on as Class Counsel, and which the Court approved, is harmful to many of the African-American players he represents. Locks Motion ¶ 14(n). He complains that he was not allowed to submit claims without the Diagnosing Physician Certification of a treating physician who was alive, but simply not responsive. *Id.* ¶ 39. He complains about the right of the NFL to file appeals, when that right is stated plainly in Section 31 of the Settlement – and essentially argues that the NFL's taking appeals is in itself bad faith. *Id.* ¶ 33. All of his arguments lack merit.¹⁵

A. Locks' Complaints Have Already Been Addressed

One of the most troubling things about the Locks Motion is the obliviousness to the salient fact that most of the complaints that he raises have already been addressed by Co-Lead Class

¹⁵ Although the NFL has the right under the Settlement to take appeals, Co-Lead Class Counsel closely monitors the appeals taken by the NFL in order to ensure, among other things, that they are not taken in bad faith. On two occasions to date, Co-Lead Class Counsel has challenged NFL appeals as taken in bad faith.

Counsel, either in its opposition to the earlier motion of X1Law, in Seeger Weiss' response to the November Memo, and/or overall in the course of implementation of the Settlement, including the February 2018 FAQs.

On August 15, 2017, X1Law filed a motion ("X1Law Motion") to challenge "new rules" that it asserted were being made in the Settlement to the detriment of its clients. ECF No. 8267. Like the purported "Secret Amendments" and problems in the Settlement that Locks and certain firms having filed Joinders now complain about, the X1Law Motion protested allegedly strict application of BAP standards to claims for Qualifying Diagnoses of dementia (Level 1.5 and Level 2 Neurocognitive Impairment) before the Effective Date of the Settlement (*see* Locks Motion ¶¶ 14(e), 19), improper application of the "generally consistent" standard for pre-Effective Date dementia claims (*see id.* ¶¶ 14(f), 19), the requirement and timing of corroborating affidavits for Qualifying Diagnoses of dementia (*see id.* ¶¶ 14(g)), and the need for the Diagnosing Physician to actually see the Retired NFL Football Player (*see* Zimmerman Joinder). Despite its agreement with the X1Law Motion now, at the time, Locks was critical of it. Seeger Weiss provided Locks the opportunity to review the opposition brief to the X1Law Motion before it was filed and he endorsed the briefing while offering additional edits for consideration. *See* Seeger Decl., Exhibit A. Not only does Locks sidestep its sudden turnabout in the Locks Motion, but it disregards the Court's resolution of the X1Law Motion: "Movants must proceed through the Claims Administration process, and if the claims are denied, movants must follow the proper appeals process. Movants' attempt to circumvent those processes by directly petitioning the Court is improper." ECF No. 8882.

In the November Memo, which Locks includes with its Motion (Locks Motion, Exhibit I), Locks listed twelve grievances for the Claims Administrator about the Settlement and offered

“LLF Solutions” that the Court, Special Master, or Claims Administrator should make. Locks neglects to mention that Seeger Weiss prepared a point-by-point response to that memorandum or include it with the Locks Motion. *See* Seeger Decl., Exhibit B. As is relevant to the Locks Motion, the November Memo complained about: (i) requests for affidavits (or other evidence) corroborating a player’s claimed functional impairment, as to which Seeger Weiss explained in response that corroborating evidence is a basic feature of the Qualifying Diagnoses of dementia (or such a diagnosis in general); (ii) “strict” application of the BAP criteria and the AAP standard of review, as to which Seeger Weiss explained that it was pursuing any mistakes in application of the “generally consistent” standard through appeals and otherwise; (iii) the handing of the “incapacity of diagnosing physicians,” as to which Seeger Weiss explained that it was working to ensure that accommodations were established and players were treated fairly; and (iv) the problem of co-morbidity in claims for Alzheimer’s and Parkinson’s disease (i.e., causation), as to which Seeger Weiss explained that it was addressing the issue through appeals and other means.¹⁶

As Seeger Weiss made clear in response to the November Memo and earlier in an in-person meeting with Locks, it was actively engaged in ensuring that the Settlement Agreement is implemented as intended. Indeed, the many appeals that Seeger Weiss has supported on players’ behalf and other submissions to the Special Masters concerning disputes about implementation of the Settlement ultimately culminated in the FAQs that were promulgated in February. These FAQs address, among many other matters, the recurring complaints that Locks has about the “generally

¹⁶ Additionally, the November Memo evinced further stark ignorance of the actual terms of the Settlement Agreement. For example, Locks complained that the NFL should have only 10 days to appeal a Notice of Monetary Award and argued that Monetary Awards should be paid pending appeal. The Settlement Agreement allows the NFL 30 days to appeal and expressly states that payments of Monetary Awards can be made only at the conclusion of any appeals. *See* Settlement Agreement §§ 9.3(a), 9.7.

B. The AAP Is Working

First, Locks complains about the size and constituency of the AAP, *see* Locks Motion ¶¶ 52-59, but this is at odds with the Settlement Agreement and his own involvement in the process. The Settlement Agreement provided for an AAP consisting of five board-certified neurologists who are to be jointly recommended by Co-Lead Class Counsel and the NFL and to be compensated

a “reasonable rate” for their time. *See* Settlement Agreement § 9.8(a). In marshaling candidates for consideration for the AAP and the AAPC slots, Seeger Weiss reached out on several occasions to Class Counsel, including Locks. *See* Seeger Decl. ¶ 21. Similarly, as the NFL proposed candidates for the AAP and the AAPC, Seeger Weiss sought the input of Class Counsel, including Locks. *See id.* Ultimately, each side in the process worked through the qualifications and backgrounds of over 40 possible candidates, reduced that to a smaller pool whom the parties interviewed, and then reached a final slate of candidates that were presented to the Court for appointment along with a common “reasonable rate” that was based on the compensation each of the candidates reported they would typically accept for such an engagement. *See id.* The qualifications of these candidates speak for themselves and include two who were originally proposed by Locks. *See id.* His complaints at this late date about the composition of the AAP and AAPC or their members’ compensation are not only untimely, but also peculiar given the appointment of two of the candidates whom he recommended in the first place. *See id.*

When the volume of claims, like registrations, exceeded projections, and one member of the AAP was not able to dedicate sufficient time to his responsibilities, the decision was made to remove one member of the AAP and add two new members. *See id.* 22. The same process as in the initial selection of members was followed. Co-Lead Class Counsel identified candidates, including those proposed by Locks and other Class Counsel. *See id.* The Parties then engaged in a review of the candidates and ultimately reached an agreement on two candidates, who were submitted to the Court for consideration. *See id.*; Brown Decl. ¶¶ 15-16.

The Locks Motion completely neglects this second effort by Co-Lead Class Counsel to not only ensure a fully productive AAP, but to augment the AAP’s ranks in order to increase its capacity. Locks also neglects its own role in the process, except to complain that three of its other

candidates did not end up on the AAP. One of those candidates, though, made clear in conversation with the parties that he was not really looking for new engagements but would possibly consider the opportunity, but for a rate far in excess of the “reasonable rate” ultimately approved by the Court (and accepted by every other candidate). *See* Seeger Decl. ¶ 23. The second candidate was originally suggested by the NFL. *See id.* The third candidate was not viable because he was plainly conflicted, listing a multi-year “Consultantship” with Locks from 2015-17. *See id.* Finally, Locks’ suggestion that candidacies were jeopardized if a neurologist had treated a player is simply false. One of the current members had treated and diagnosed a player who is a Settlement Class Member. There can be no dispute that all of the candidates approved by the Court are qualified to serve on the AAP or AAPC. *See id.*

The AAP has not failed. Since they were appointed on March 5, 2018 (ECF No. 9753), the new members of the AAP were quickly brought up to speed on their duties, and they have already enabled that body to increase the number of claims that it is reviewing on a weekly basis. *See id.* 24.

Second, there is no doubt, as Locks offers, that Section 6.4(b) of the Settlement establishes a standard of review by the AAP and for pre-Effective Date claims that the diagnoses be “based on principles” that are “generally consistent” with the BAP criteria. Locks Motion ¶¶ 15-17. The “generally consistent” standard has been the subject of dispute between the Settling Parties, has been the subject of appeals of Notices of Monetary Awards and Denials of Monetary Awards, and has been addressed in what Seeger Weiss sees as a favorable February FAQ. *See* FAQ 95. Locks seeks to take the NFL’s disagreement with Locks’ understanding of the “generally consistent” standard as proof that the Settlement, like the AAP, is not working. Through the process of

argument, appeals, and presentations to the Special Masters, guidance on the standard has been developed.

C. “The Latest Skirmish” – Locks’ Flawed Example of a Failed Settlement Received a Notice of Monetary Award

Locks offers the case of Mr. Radloff to show that the claims process is not working. Locks Motion ¶¶ 28-32. To the contrary, Mr. Radloff’s situation demonstrates that it is. Mr. Radloff’s claim was approved and he received a Notice of Monetary Award. *See* Seeger Decl. ¶ 26. The Anapol Weiss firm filed a Motion for a Hearing to Seek Court Intervention of the Processing of Certain Claims the day prior to the Locks Motion, based solely on the pending claim of Mr. Radloff.¹⁷ ECF No. 9784. Anapol Weiss complained about the time that Mr. Radloff has been waiting for his claim to be determined, but neglected to offer that Mr. Radloff’s claim involved an “Unavailable Physician” (discussed above), which required special accommodation (or the prospect of possible denial). *See id.* Once accommodation of the claim was reached through the efforts of Co-Lead Class Counsel, the claim was presented to the AAP for review and, on the Saturday before the Anapol Motion was filed, was approved by the AAP. *See id.* When the Notice of Monetary Award was sent to Mr. Radloff, Anapol immediately had to dismiss its motion as moot. ECF No. 9788.

There is no doubt that some claims will raise more issues than others, leading to longer processing times or even outcomes that will be the subject of an appeal (either by a player or the NFL).¹⁸ Any denial can be seen as an injustice, just like any appeal of an award can be

¹⁷ It is evident that the Anapol Motion was filed in coordination with the Locks Motion. Not only does the timing of the two motions suggest coordination – the Anapol Motion on March 19th and the Locks Motion on March 20th – but the Locks Motion discusses the fact that Mr. Radloff received a Notice of Monetary Award even though the Anapol Motion had not yet been withdrawn.

¹⁸ The Anapol Motion and the Locks Motion were both joined in by Mitnick. ECF Nos. 9785, 9834. In both Joinders, Mitnick offers up anecdotes concerning two of his clients to show that

characterized as an effort by the NFL to undo what is right. There is no disputing the fact that the NFL has often been difficult to deal with in the Settlement implementation, and the advocacy of Co-Lead Class Counsel has been necessary to ensure that the Settlement is and remains fair to the Settlement Class Members. But hyperbole is not truth. The Settlement is paying hundreds of millions of dollars to the Settlement Class Members. With the increase in tools provided by the FAQs promulgated in February, Co-Lead Class Counsel is ensuring that the claims process, like the audit process, works as it should. No doubt, there may be delays in processing some claims, but as the Court made clear in disposing of the X1Law Motion, the claims process needs to play out and a full and proper administrative record created. Attempting “to circumvent those processes by directly petitioning the Court is improper.” (ECF No. 8882).

D. The Audit Process Is Working

Locks focuses on one isolated example to argue that the audit process is not working. Locks Motion ¶¶ 23-27. Like the example of Mr. Radloff (first raised in the Anapol Motion), the

there is a problem with delay. In Mitnick’s case, the delay was largely his own creation. For the first player that he discussed, in May 2017, Mr. Mitnick had submitted the Claim Package with a Diagnosing Physician Certification by someone who was not qualified. Only three months later, in August 2017, this claim was denied in due course as a result of Mr. Mitnick’s error. When he resubmitted his client’s claim with a new Claim Package in March 2018, with a Diagnosing Physician Certification signed by a different medical provider, it was subject to immediate audit as part of the fraud prevention provisions of the Settlement Agreement. *See Settlement Agreement* § 10.3(d)(i). Notably, although the initial claim was processed in three months, Mr. Mitnick took *seven months* to file the new claim for his client. *See Seeger Decl.* ¶ 28.

The story concerning the claim of the second player that Mitnick discusses is equally a story about his own delay. Mitnick originally submitted a deficient Claim Package in May 2017. Mr. Mitnick quickly received a notice requesting additional records. Over the next several months, Mr. Mitnick slowly provided the additional documentation that was requested, culminating in December 2017 when Mr. Mitnick submitted an updated Diagnosing Physician Certification, which contained a different diagnosis date than the original Diagnosing Physician Certification. Only 5 days later, after he finally cured all the deficiencies in his client’s claim and provided a correct Diagnosing Physician Certification, the Claims Administrator approved the claim and issued a Notice of Monetary Award Determination. *See id.* ¶ 29.

example that Locks uses is also not a Locks client,¹⁹ and like the Anapol Weiss example, the earlier admonition of the Court when it disposed of the X1Law motion should have been heeded. At any rate, on March 23, 2018, shortly after Locks filed the instant motion, the audit that Locks describes was closed in due course. *See* Seeger Decl. ¶ 27. There was no “gutting [of] the approved diagnosis and claim.” Locks Motion ¶ 26. Rather, on April 4, 2018, a substantial payment was made to the Settlement Class Member. *See* Seeger Decl. ¶ 27.

From the start of the audit process, over 100 claims have already been released to proceed to processing on the merits. *See* Brown Decl., ¶ 41(a). Others are moving through the audit process and may also be released or eventually referred to the Special Masters for consideration. *See id.* ¶ 41(b). Any claims program, particularly one as expansive as this, will require audit procedures.²⁰ Given questions about the integrity of many of the claims that were submitted in the first year of the program, the audit process is playing an important role in separating claims for more rapid review from those claims that require further investigation.

Seeger Weiss is aware of the potential that any audit process has for abuse – and is vigilantly monitoring each audit as it readies for the next stage of the audit process. Indeed, Seeger Weiss’ role in overseeing the audit process is expressly set forth in the Rules Governing Audits that the Special Masters promulgated in February. Co-Lead Class Counsel has the opportunity to

¹⁹ Inasmuch as Locks cannot even find actual examples from his own roster of “approximately 1,100 registered players” and has to rely on inapt examples offered by other firms’ clients (whose identifying information Locks has failed to fully redact on multiple occasions), it is difficult to accept Locks’ sweeping contention that the Settlement is “in danger of failing in its execution.”

²⁰ The Claims Administrator describes the Audit process at length in the Response by the Claims Administrator to Motion to Prohibit Ex Parte Interviews with Treating Physicians (Document No. 9815) and Partial Joinder (Document No. 9843) to the Motion Brought by the Locks Law Firm, Filed by Neurocognitive Football Lawyers, LLC (ECF No. 9870).

review and weigh in on any audit report before referral to the Special Master, has the opportunity to submit statements after referral to the Special Master and, in the instances where the Special Master accepts the referral and proceeds to a hearing, the opportunity to submit papers in the course of the proceedings. Co-Lead Class Counsel will continue to ensure that the audit process serves its limited purpose of identifying claims based on misrepresentations, not as a alternative avenue of appeal for the NFL.

E. Claims Where the Diagnosing “Physician Is Unavailable” to Sign a DPC

The Settlement Agreement, which Locks signed, generally requires the submission of a Diagnosing Physician Certification with the Claims Package. There are some exceptions to that general rule, one of which has caused complications for some of Locks’ clients’ and other Class Members. As a general principle, the diagnosing physician must sign the Diagnosing Physician Certification. This general principle is subject to a list of enumerated exceptions in Section 8.2(a) of the Settlement Agreement, including the one that has been the focus of another of Locks’ recurring complaints. Section 8.2(a)(iii) provides that a Claim Package does not need a Diagnosing Physician Certification from diagnosing physician when that physician is dead, incompetent, or incapacitated:

In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player’s medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician.

As it made clear to Locks in response to the November Memo, Seeger Weiss does not agree with the NFL's position, but has worked tirelessly to ensure that "unavailable physicians" in other circumstances are not grounds for denial of meritorious claims.²¹ In another quixotic effort to champion nonexistent settlement terms, Locks argues that an "obvious indicia of reliability" standard is supposed to guide the process for such claims. Locks Motion ¶ 40. The simple answer to that contention is that there is no such standard.

F. There Have Been No "Surprise Amendments"

Locks argues that he needs to be in charge because of "surprise amendments" to the Settlement that have been made during implementation. Locks Motion ¶¶ 43-51. That is not true, the process is transparent. *See* Brown Decl. ¶¶ 24-25. The first supposed "amendment" is the "strict application" of the BAP. This has been discussed at length above and was briefed in response to the X1Law Motion. There is no "strict requirement" and if Locks does not believe the information requested after preliminary review of a claims package is needed, he can hit the "Send to AAP" button to expedite review on the merits.

Relatedly, Locks complains about notices of preliminary review in dementia claims, requesting sworn statements to corroborate a player's functional impairment. Locks Motion ¶¶ 14(f), 43-44. As discussed above, any corroborative evidence will suffice so long as it provided a basis for the physician's diagnosis, including pre-diagnosis matters stated in a verification. Although a post-date verification might raise some discussion with the Claims Administrator, there

²¹ Locks also raises the issue of physicians under the NFL's 88 Plan (a neurocognitive benefit plan for players) not being permitted to sign Diagnosing Physician Certifications. *See* Locks Motion ¶ 41. That, too, is unavailing. Although these physicians have been directed for legal reasons by the Plan Trustee not to sign Diagnosing Physician Certifications, Seeger Weiss negotiated an accommodation for this as well, which is now reflected in FAQs 93 and 111.

is no mandatory requirement that a verification supporting facts on which a diagnosis is based be dated prior to the date of diagnosis.

VI. LOCKS' ALLIES DO NOT ADVANCE HIS CAUSE

A handful of firms joined in the Locks Motion – which is far from impressive given that the Settlement involves over 413 law firms and 11,007 unrepresented Settlement Class Members,²² and two of those firms have already withdrawn their Joinder. *See* Seeger Decl. ¶ 35. An examination of those remaining firms quickly shows three things: (i) the Settlement *is* working; (ii) they provide no genuine support for Locks; and (iii) if anything, the Joinder of certain firms should give the Court pause.

First, the Settlement is working. Among the firms filing Joinders, there are 172 claims involving their clients that have been approved, representing nearly \$173 million in Monetary Awards noticed. Indeed Kreindler has already had 6 of its 9 claims approved, Casey Gerry has had its one claim approved, and Mitnick has had 8 of his 13 claims approved. Complaints from various law firms that the Settlement is becoming filled with onerous burdens or, as Locks put it a “labyrinth” (Locks Motion ¶ 13) needs to be considered in light of the fact that 81 unrepresented Settlement Class Members have already received awards. *See* Seeger Decl. ¶ 36.

Second, the Joinders lend no genuine support to the Locks Motion. There can be little doubt that many of the Joinders were orchestrated. Three of them are identical, strongly suggesting that a template was employed. *See* ECF Nos. 9813 (Pope McGlamry Joinder), 9821 (McCorvey Joinder), 9830 (Casey Gerry Joinder). Another 9 say little more than “me too” and offer no details to support either their interest in joining the Locks Motion or the merits of the Locks Motion,

²² To date, 122 firms have filed claims for their clients and 677 unrepresented Settlement Class Members have submitted claims. *See id.*

including Anapol, Franco, Goldberg (with Girardi Keese and Russomano & Borrello), Hakimi, Neurocognitive Football Lawyers, Podhurst, Provost, Smith & Stallworth, and Wyatt. Indeed, some of these firms do not even have clients of their own or have no claims pending, so their support for the Locks Motion is rather meaningless. These include Casey Gerry, whose only claim to date has been paid; Franco, which has filed no claims; Hagen, which has not registered for any players; McCorvey, which has filed no claims; and Russomanno (which is listed in the Goldberg Persky Joinder). *See* Seeger Decl. ¶ 37. Others make clear that they do not even support Locks' nomination of himself as Administrative Class Counsel, either remaining silent on that matter or proposing the creation of a committee in his stead.²³ *See* Joinders of Anapol, Hagen, Hausfeld, Kreindler, Podhurst, and Zimmerman.

Third, the involvement of some of the firms that filed Joinders should give the Court pause.²⁴ As with Locks' clients, Seeger Weiss and the Claims Administrator receive regular

²³ This is exactly what Seeger Weiss endeavored to do with the regular calls and communications with Locks and the other Class Counsel – establish an informal committee. As appealing as the notion of a committee is, its utility is limited. It is good for the development of ideas, the gathering of information, and the identification of problems, but only so long as the members of the committee are truly committed to the common good. Besides, each side of the Settlement (the administrators, the NFL, and the Settlement Class) have their lead liaison. The proposal for a liaison committee to work on the implementation of the Settlement is ill-considered and would lead to inefficiency and delay.

²⁴ A special case among the Joinder firms is Lubel, who has his particular agenda. He attacked the Settlement both before and after final approval. As counsel for the Alexander Objectors, he filed objections to the Settlement and was one of the few who took his objections to the Third Circuit. *See* ECF Nos. 6237, 6552. Once the Settlement went into effect, he shifted to attacking Co-Lead Class Counsel, filing objections to the fee petition (arguing inane evidentiary points) (ECF No. 7355), an unsuccessful motion to take discovery of Co-Lead Class Counsel (ECF No. 7606), an unauthorized sur-reply brief in opposition to the fee petition, (ECF No. 7533), a meritless and similarly unauthorized supplement to his objections to the Fee Petition (ECF No. 8395), and a motion to compel compliance with CMO No. 5 (which the Court denied) (ECF Nos. 8396, 8449, 9510). The Locks Motion simply afforded Lubel another opportunity to emerge and mount more attacks on Co-Lead Class Counsel and reiterate his longstanding contention that the Settlement's promised benefits are illusory.

communications from some of these firms' clients with questions and related complaints that their own lawyers are not returning their calls.²⁵ These include most notably Goldberg Persky, Kreindler, Mitnick, Pope McGlamry, and Provost. *See* Seeger Decl. ¶ 38. Moreover, based on Seeger Weiss' investigation to date, Locks and many of the Joinder firms have signed-off on 138 funding assignments of the claims of 99 of their clients representing advances of over \$5,600,000.²⁶ *See id.* ¶ 39. Yet others are dragging out the claims process for their own clients by not responding to requests from the Claims Administrator for months at a time, resulting in above average response times (even greater than those of unrepresented Settlement Class Members). These include Zimmerman, Girardi, Kreindler, and Wyatt. *See id.* ¶ 40.

More disturbingly, a few of the firms have either clients' claims under formal audit, or they themselves are under formal audit. *See id.* ¶ 41. Perhaps those firms hope that a changing of the guard as to oversight of the claims process will bring them less unwelcome scrutiny. Because of the sensitivity of these ongoing investigations, the details of these audit investigations will not be

²⁵ Others appear to be ignorant of basic aspects of the Settlement program. For instance, the Berkowitz Joinder clumsily refers to a "Claims Commission" that is reviewing claims. *See* ECF No. 9855, at 4. There is a Claims Administrator, but no "Claims Commission."

²⁶ Two firms that have joined in the Locks Motion went over and above the simple act of signing assignments on behalf of their clients. Mitnick actually solicited for Thrivest, one of the most notorious funders known to Co-Lead Class Counsel in the Settlement. *See* Seeger Decl., Exhibit E. The other, Hakimi (f/k/a Top NFL Lawyers) was also initially engaged in a side business of seeking investors to fund lending arrangements with players with promised returns of nearly 80%. *See* Seeger Decl., Exhibit F.

provided here, but will be shared *in camera* if the Court requests.²⁷ In all, there are over 356 claims in audit for Locks and the firms who have filed Joinders.²⁸ *See id.*

Finally, one of the Joinders, Zimmerman's, raised two concerns in sufficient detail that have not yet been addressed. However, Zimmerman, like Locks, does not appreciate how the Settlement is now working, in large measure because of Seeger Weiss' efforts, or simply does not understand the Settlement.

In its Joinder, Zimmerman raises a concern with the requirement that the diagnosing physician needs to actually see the player in the course of rendering a diagnosis. Co-Lead Class Counsel, though, spoke with attorneys at Zimmerman in September 2017 about this very issue. *See id.* ¶ 42. Although there were treating physicians for many of Zimmerman's clients, Zimmerman decided to hire a neurologist to review each of the players' medical records and complete a Diagnosing Physician Certification. No other firm undertook this practice. As Co-Lead Class Counsel explained to the Zimmerman firm last September, this Settlement program is not one where medical records are simply submitted for review by the AAP or the Claims Administrator along with a Claim Form. *See id.* Rather, there needs to be a diagnosing physician

²⁷ The circumstances surrounding the so-called Neurocognitive Football Lawyers are discussed at some length in the Response by the Claims Administrator to its Joinder and Motion to Prohibit Ex Parte Interviews, filed on April 9, 2018 (ECF No. 9870). Neurocognitive Football Lawyers is a consortium of four law firms that were not involved in any of the lawsuits against the NFL before the Settlement. *Id.* at 3. They have submitted 143 claims, all based on alleged dementia or Alzheimer's disease. *Id.* at 5. Of these, 131 claims are in one or more audits based on the use of questionable examination techniques that yielded diagnoses for virtually every examined player. *Id.* at 22-30.

²⁸ These include the firms that submitted claims supported by a neuropsychologist, Dr. Serena Hoover, who has been banned from the Settlement Program for her conduct in evaluating players. Many of these firms have only a handful of claims in audit, but others, such as Hakimi (f/k/a Top NFL Lawyers), Smith & Stallworth and Neurocognitive Lawyers account for 258 of these claims in audit. *See Seeger Decl.* ¶ 41. Of course, some firms with claims pending have no claims in audit, including Girardi, Kreindler, and Provost. *See id.*

– either a pre-Effective Date physician who might have been a treating physician, or a Qualified MAF Physician or a BAP Provider after the Effective Date. The diagnosing physician is to examine the player, perhaps administering neuropsychological assessments. Indeed, the fact that the Settlement requires that a diagnosis be made while a player is living emphasizes this point. As Co-Lead Class Counsel explained, the treating physicians for Zimmerman’s players should simply provide the Diagnosing Physician Certification. *See* FAQ 88.

Zimmerman also raises concerns with the BAP.²⁹ It asserts an alleged failing of the BAP by pointing to the number of players who are eligible for the BAP (over 12,000) and comparing that to the number of appointments that have been scheduled. As the BAP Administrator makes clear, however, only a fraction of the 12,000 eligible players have yet endeavored to schedule their BAP appointments to date -- only 3,944 have. *See* Garretson Decl., ¶ 15. Indeed, many of these players are under the age of 43 and will not need to have their BAP examinations completed until the BAP program begins to wind down in 2027. Currently, 92.5% of the players who have contacted the BAP Administrator have had one or more appointments offered to them or scheduled. *See id.*

With respect to the scheduling of the examinations themselves, Seeger Weiss acknowledges that there are, and will always be, instances where the program does not work perfectly. A BAP Provider may fail to properly notify a player about a cancellation, a player may fail to properly confirm an appointment, or a BAP Provider may be slow to finalize a report. The BAP Administrator, however, is actively engaged in ensuring that each aspect of the BAP Program

²⁹ Podhurst refers to this portion of the Zimmerman Joinder in its own Joinder. ECF No. 9831, at 3. Locks raises an additional concern (with no supporting detail) that few players are receiving diagnoses and that BAP Providers are leaving the BAP Program. *See* Locks Motion ¶ 14(l). The BAP program has already provided 51 diagnoses and there is no exodus of BAP Providers. *See* Garreston Decl., ¶ 25.

is working as it should, and intervenes to address problems with BAP Providers as they arise. *See Id.* ¶¶ 5, 6, 12, 13, 18, 20, 22-24.

Similarly, the timing between contact from a player and the scheduled appointment is, on average, 36 days. *See id.*, ¶ 15. There are some regions where scheduling is currently on a slower schedule. The BAP Administrator, however, is engaged in identifying and contracting with BAP Providers in those regions and anticipates that appointments can be accelerated when additional Providers are available. *See id.*, ¶ 19. Finally, the BAP Administrator has worked to ensure that BAP Providers finalize full and accurate reports of the evaluations to ensure that diagnoses can be paid without problem. *See id.*, ¶¶ 20-23.

VII. CONCLUSION

In short, the Locks Motion and the various Joinders in support thereof make no persuasive case for appointing an “Administrative Class Counsel” more than fifteen months into the Settlement’s implementation. Contrary to the rhetoric and bombast presented, the facts speak for themselves. The Settlement is working and the existing oversight structure is fully capable of addressing any problems or glitches. For all of the foregoing reasons, the Court should deny the Locks Motion.

Dated: April 13, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
 Christopher A. Seeger
 SEEGER WEISS LLP
 55 Challenger Road, 6th Fl
 Ridgefield Park, New Jersey 07660
 Phone: (212) 584-0700
 Fax: (212) 584-0799

Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I, Christopher A. Seeger, hereby certify that a true and correct copy of the foregoing response was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: April 13, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Fl
Ridgefield Park, New Jersey 07660
Phone: (212) 584-0700
Fax: (212) 584-0799

Co-Lead Class Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

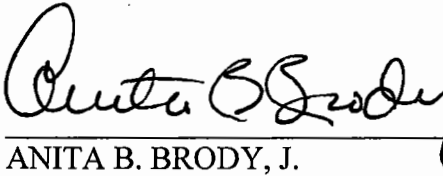
AND NOW, this 18th day of April, 2018, after careful consideration of the Motion of Class Counsel the Locks Firm for Appointment of Administrative Class Counsel (ECF No. 9786) it is **ORDERED** that the Motion is **DENIED**. All Motions for Joinder in the Locks Firm's Motion are **DENIED** as moot.¹

In reaching this decision, the Court also considered:

- The response from the NFL Parties (ECF No. 9879),
- The response of Co-Lead Class Counsel Christopher Seeger (ECF No. 9885) with particular attention to the Declaration,
- The Status Report from the Claims Administrator (ECF No. 9882),
- The declaration of Matthew L. Garretson (ECF No. 9883),
- The statement of the Special Masters (ECF No. 9884),

¹ The Joinder Motions are ECF Nos. 9839, 9855, 9830, 9828, 9827, 9829, 9852, 9816, 9842, 9856, 9821, 9834, 9831, 9813, 9819, 9854, 9836, 9843, and 9820.

- The Court's role as the fiduciary to the Class Members,
- The Court's familiarity with all aspects of the implementation of the settlement and the chance to witness the fine job Seeger Weiss has done in protecting all the Members of the Class, and
- The Locks Firm's role in facilitating Third-Party Funding Agreements to Class Members prohibited under the Settlement Agreement. This undermines any claim by the Locks Firm that it would be able to faithfully administer the Agreement.


ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

O:\ABB 2018\L-Z\NFL Locks Motion.docx

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL
PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14 – 00029 – AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
Successor-in-interest to
NFL Properties, Inc.,

Defendants

THIS DOCUMENT RELATES TO

All Actions

**DECLARATION OF ANTHONY TARRICONE PURSUANT TO
THIS COURT'S ORDER DATED MARCH 28, 2018**

Anthony Tarricone, pursuant to 28 U.S.C 1746, declares the following is true and correct under penalty of perjury:

1. I am a partner at the law firm of Kreindler & Kreindler LLP, and I submit this declaration pursuant to the Order of this Court dated March 28, 2018 (Doc. No. 9833).

2. On April 26, 2012, in Case Management Order No. 2 (Doc. No. 64), this Court appointed me as a member of the Plaintiff's Steering Committee in this matter.

3. I hereby answer the questions put forth by the Court in its Order dated March 28, 2018, as follows:

- 1A. Kreindler & Kreindler LLP and associated attorneys previously represented 79 Settlement Class Members whom we no longer represent.
- 1B. Kreindler & Kreindler LLP and associated attorneys currently represent 169 Settlement Class Members.
- 2A. Five (5) Settlement Class Members currently represented by Kreindler & Kreindler LLP and associated attorneys have received a monetary award.
- 2B. One (1) Settlement Class Member currently represented by Kreindler & Kreindler LLP and associated attorneys has been informed by the Claims Administrator that he is entitled to receive a Monetary Award, but has not yet received that award because it has been appealed by the NFL.
- 2C. Ten (10) Settlement Class Members currently represented by Kreindler & Kreindler LLP and associated attorneys have applied for a Monetary Award. This number includes the class members in 2A and 2B above.
- 2D. I expect an additional 9 Settlement Class Members currently represented by Kreindler & Kreindler LLP and associated attorneys, who have not yet applied for a Monetary Award, to be eligible to receive a Monetary Award.
- 3. No Settlement Class Members currently represented by Kreindler & Kreindler LLP and associated attorneys have entered agreements to assign their rights to a Monetary Award. To the extent any Settlement Class Members formerly represented by Kreindler & Kreindler LLP and associated attorneys have entered into an agreement to assign their rights to

a Monetary Award it was done without my knowledge or the knowledge of any other attorney associated with Kreindler & Kreindler LLP.

4. Not applicable.
5. Neither I, nor any other attorney associated with my law firm, is obligated to pay or forward (directly or indirectly) any portion of a Settlement Class Member's Monetary Award to any third party litigation funder.
6. Neither I nor any other attorney associated with my law firm played any role in creating, promoting, or facilitating any Assignments by any Settlement Class Member.
7. Neither I, nor any attorney associated with Kreindler & Kreindler LLP or any individual or entity related to Kreindler & Kreindler LLP, have any direct or indirect (professional or personal) association with any of the third party litigation funders used by Settlement Class Members previously or currently represented by me, Kreindler & Kreindler LLP, or any attorney associated with Kreindler & Kreindler LLP.
8. Not applicable.

[Remainder of Page Intentionally Left Blank]

4. Since no Settlement Class Members currently represented by Kreindler & Kreindler, LLP, and no Settlement Class Members previously represented by Kreindler & Kreindler LLP (during the course of that representation) entered into any Assignment, neither I nor my law firm have any documents to submit that are responsive to the request for submission of documents set forth in this Court's Order dated March 28, 2018.

KREINDLER & KREINDLER, LLP

/s/ Anthony Tarricone
Anthony Tarricone (MA BBO# 492480)
855 Boylston Street
Boston, MA 02116
(617) 424-9100
atarricone@kreindler.com

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2018, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Anthony Tarricone

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**MOTION FOR RECONSIDERATION OF THE
DENIAL OF THE LOCKS LAW FIRM'S MOTION FOR
APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL**

Locks Law Firm ("LLF") respectfully submits this Motion for Reconsideration, which includes the Declaration of Gene Locks and the Expert Opinion of Alfred Putnam, partner and former Chairman and CEO of the firm of Drinker, Biddle & Reath, attached as Exhibit 1 and Exhibit 2, respectively. LLF asks that the Court reconsider its denial of LLF's Motion for Appointment of Administrative Class Counsel (ECF No. 9786). Specifically, LLF asks that the Court withdraw its adverse finding and reprimand on the issue of third-party funders and then reserve

judgment on the balance of this motion until after completion of the hearing scheduled for May 15, 2018 concerning class benefit fees and the Court's Explanation and Order relating to the Third Party Funder Litigation (ECF No 9531) along with any appropriate briefing that may follow that hearing.

PRELIMINARY STATEMENT

In its April 18 Order denying LLF's Motion for Appointment of Administrative Class Counsel, the Court identified one of the grounds for its ruling as follows:

- The Locks Firm's role in facilitating Third-Party Funding Agreements to Class Members prohibited under the Settlement Agreement. This undermines any claim by the Locks Firm that it would be able to faithfully administer the Agreement.

ECF No. 9890, at 2. The issue of third-party funding agreements formed no part of LLF's motion, and LLF was not reasonably on notice that the issue might be pertinent. The matter was raised for the first time in the response brief of Co-Lead Counsel Chris Seeger. Prior to the filing of the Seeger response, this Court had denied LLF the opportunity to file any reply to any response brief. As a consequence, this Court has made a finding of fact adverse to LLF on the issue of third-party funding agreements and has cast aspersions on LLF's good faith in its administration of the Settlement Agreement on behalf of the class and its individual clients, all without giving the firm any opportunity to submit evidence, reply to the arguments of Mr. Seeger, or otherwise be heard on the issue.

This fact is all the more troubling in light of this Court's March 28, 2018 Order (ECF No. 9833) — issued a week after LLF filed its motion — requiring all

attorneys serving in a representative capacity for the class (including LLF) to produce documents and answer questions relating to the issue of third-party funding agreements and to participate in a May 15 hearing on that subject in relation to class benefit fees. In other words, the Court has issued a finding adverse to LLF without hearing from the firm on the very issue as to which it has asked LLF and other firms to produce documents, answer questions, and participate in a hearing. This creates the appearance that the Court has prejudged the results of that exercise before reviewing the evidence and hearing from counsel.

The grounds for this Motion for Reconsideration are twofold.

First, it was a “clear error of law,” *Simon Wrecking Co. v. AIU Insurance Co.*, 541 F. Supp. 2d 714, 715–716 (E.D. Pa. 2008) (Brody, J.), for the Court to issue a finding on the issue of “The Locks Firm’s role in facilitating Third-Party Funding Agreements to Class Members” and to use that finding as one of the grounds for denying LLF’s motion without giving the firm any opportunity to be heard on that issue, submit evidence, or refute the arguments and assertions made by Mr. Seeger on which the Court appears to have based its finding.

Second, insofar as the Court continues to view the issue of third-party funding as relevant to the disposition of LLF’s Motion for Appointment of Administrative Class Counsel, LLF requests the opportunity to submit “new evidence” concerning these matters “that was not available when the court” denied LLF’s motion. *Id.* As Part II describes below, that new evidence will establish the following propositions: (1) LLF had no reasonable notice and no actual belief that the Settlement Agreement prohibited players from obtaining advances on their

monetary awards from third-party funders; indeed, the firm had affirmative indications from Co-Lead Counsel Chris Seeger that advances on monetary awards were not prohibited; (2) LLF assisted clients with such advances only at the urgent request of the clients and only after informing clients of the significant downsides of these funding arrangements and counseling against them; (3) LLF ceased all assistance with such funding arrangements when the Court issued its order finding those arrangements prohibited by the Settlement Agreement; (4) LLF never profited from any funding arrangement; and (5) LLF acted responsibly, ethically, and in good faith at all times. Some of this new evidence was within LLF's possession when it filed the Motion for Appointment of Administrative Class Counsel but the firm had no notice that the evidence would be relevant, meaning that it was not "available" for purposes of the motion as filed. Other evidence was not available under any standard when LLF filed its motion. LLF summarizes this evidence in Part II and in the Declaration of Gene Locks and offers a more complete submission in conjunction with its response to the Court's Order requiring answers to questions and production of documents. ECF No. 9833.

Given the relationship between these two matters created by the Court's Order denying the motion, LLF asks that the Court withdraw its finding against LLF on the issue of third-party funding agreements and then reserve judgment on the balance of this Motion for Reconsideration until after the May 15 hearing and any appropriate briefing that may follow that hearing.

ARGUMENT

I. This Court Made a Clear Error of Law When it Reprimanded LLF, Issued a Finding Adverse to the Firm, and Relied on that Finding as One Ground for Denying the Motion, All Without Giving LLF Any Opportunity to be Heard on the Issue.

When this Court issued a finding in an unsealed order accusing LLF of conduct that “undermines any claim by the Locks Firm that it would be able to faithfully administer the Agreement,” ECF No. 9890, at 2, it publicly impugned the professionalism of the firm. When this Court relied on that finding in the text of its order as one ground for denying LLF’s Motion for Appointment of Administrative Class Counsel, it treated that finding not merely as a critical comment but as a reprimand. And when this Court issued that reprimand and relied on that finding as one ground for denying LLF’s motion without giving the firm any notice or opportunity to be heard on the issue, it committed a clear error of law.

The Third Circuit has emphasized the serious harm done to members of the Bar when a court issues a reprimand in an unsealed order. Commentary that impugns the good faith of a lawyer “directly undermines [the attorney’s] professional reputation and standing in the community. That is far from an insignificant affront. A lawyer’s reputation is one of his[/her] most important professional assets.” *Adams v. Ford Motor Co.*, 653 F.3d 299, 305 (3d Cir. 2011) (citations omitted; second alteration in original). The dispute in *Adams* involved the actions taken by a federal magistrate court in response to complaints from a juror about a lawyer who contacted the juror following a verdict. The magistrate judge found that the communication was improper after a cursory hearing on short notice

in which the lawyer received no advance warning of the possibility of a reprimand. While the magistrate judge did not impose any formal sanctions, he did make a finding in an unsealed order that the lawyer had engaged in “misconduct” and referred the matter to the local bar association for investigation. *See id.* at 303. The Third Circuit held that both the substance of that ruling and the process the magistrate judge employed in reaching it constituted reversible error.

This Court has not referred any issues concerning third-party funding agreements and LLF to the bar association (and, we respectfully suggest, could not properly do so), but the harm worked by its charge of bad faith is no less serious. The Third Circuit has emphasized the gravity of the interests at stake when a court issues a reprimand, even when the court does not impose sanctions or undertake other formal disciplinary action. Judicial censure “bears a greater resemblance to a reprimand than a comment that is merely critical of [attorney] behavior,” the Third Circuit explained, when it “carries with it a degree of formality,” as is “clearly” the case when “the assessment of [the attorney’s] conduct appears in an unsealed court order” and forms part of the basis for that order. *Id.* at 306.

Adams holds that it is imperative that lawyers receive adequate notice of the possibility of censure and an opportunity to be heard before a court issues such a reprimand. These are the minimum demands of the Due Process Clause in most settings, and the ordinary requirements of due process are heightened in a case like this because of the serious and irreparable injury that an unjust judicial reprimand can inflict on a lawyer’s professional reputation.

An opportunity to be heard is “especially important” where a lawyer or firm’s reputation is at stake because sanctions “act as a symbolic statement about

the quality and integrity of an attorney's work—a statement which may have a tangible effect upon the attorneys' career." As noted above when we referenced the availability of the internet, modern search engines and web sites oriented toward allowing consumers to voice displeasure about experiences they have had exponentially increase the impact of such sanctions on a professional's reputation and career. Moreover, such complaints are not unlike a cybernetic zombie that lives on in cyberspace long after any underlying dispute has been resolved—even if it is resolved to the ultimate satisfaction of the consumer (or client).

Id. at 308–309 (quoting *Fellheimer, Eicher & Braverman, P.C., v. Charter Tech, Inc.*, 57 F.3d 1215, 1227 (3d Cir. 1995)). As the Third Circuit said in a case involving the imposition of formal sanctions, lack of adequate notice that deprives an attorney of the opportunity to be heard can be an “exceptional circumstance[]” warranting the granting of a motion for reconsideration or the reopening of a final order in such a case because the lawyer’s “professional reputation is at stake.” *Dashner v. Riedy*, 197 Fed. Appx. 127, 132, 133 (3d Cir. 2006). In another sanctions case, the Third Circuit held that a district court violated due process when it notified an attorney that it was considering the imposition of sanctions under one source of authority, 28 U.S.C. § 1927, but “it [was] not as clear [the attorney] had notice that the court was considering” another sanction it ultimately issued through its inherent powers, one that required the attorney “to attach his scarlet letter to his *pro hac vice* admissions.” *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 278 F.3d 175, 192–193 (3d Cir. 2002). *See also Fellheimer*, 57 F.3d at 1225 (holding that “notice of the precise sanctioning tool that the court intends to employ” is generally required).

The motion that LLF filed on March 20, 2018 for appointment of administrative class counsel related to the serious and persistent problems that the firm sees on a daily basis in the administration of the Settlement Agreement as it

continues to advocate for the class and its individual clients in the face of obstruction by the NFL. Third-party funding arrangements had nothing to do with LLF's motion, and at the time the firm moved for appointment of administrative class counsel it was not on notice that the Court saw any connection between the two issues. Neither was the firm on notice that the Court was even considering the idea that LLF had engaged in any improper conduct when, prior to the Court's December 2017 order, the firm responded to the needs of clients who had requested its assistance in securing needed funding. At the time LLF filed its motion, the Court had given no such indication, and so far as LLF is aware, the Court had no information at that time about any assistance the firm provided to its clients on advances from third-party lenders.

The question of third-party funding came up only in the response of Co-Lead Counsel Chris Seeger. In advance of Mr. Seeger's filing of that response, this Court forbade LLF from offering any reply. Mr. Seeger then made a series of accusations against LLF concerning the issue of third-party funding. ECF No. 9885 at 16–17. This Court then issued a ruling apparently based solely on the representations of Mr. Seeger with no opportunity for the firm to be heard on the issue.

The Court's finding that LLF's role in assisting its clients with third-party funding "undermines any claim by the Locks Firm that it would be able to faithfully administer the Agreement" is a reprimand issued in an unsealed order and used as one ground for the denial of the underlying motion. That reprimand was issued without the notice and opportunity to be heard that due process requires and that the Third Circuit has held to be "especially important where a lawyer or firm's

reputation is at stake.” *Adams*, 653 F.3d at 608; *see also Dasher*, 197 Fed. Appx. at 132–133; *In re Prudential*, 278 F.3d at 192–193. And, as Part II summarizes, a full presentation of evidence will demonstrate that the Court’s finding was erroneous. LLF respectfully submits that these actions by the Court constituted a “clear error of law,” *Simon Wrecking Co. v. AIU Insurance Co.*, 541 F. Supp. 2d 714, 715–716 (E.D. Pa. 2008) (Brody, J.) requiring that the Court grant this Motion for Reconsideration.

II. LLF Must be Given an Opportunity to Present New Evidence on the Issue of Third-Party Funding Agreements.

In response to the Court’s March 28 order (ECF No. 9833), LLF is making an extensive submission on the issue of advances to clients from third-party funders, including documents and communications relating to funding arrangements requested by individual clients, the declaration of Gene Locks with exhibits, and an expert opinion on professional responsibility and ethics offered by Alfred Putnam (a copy of which is also attached to this Motion for Reconsideration as Exhibit 2).

These materials will establish facts including, without limitation, the following:

- Prior to the Court’s December 2017 Explanation and Order relating to the Third Party Funder Litigation (ECF No 9531), LLF was not on notice, and in fact did not believe, that § 30.1 of the Settlement Agreement titled “No Assignment of Claims” or any other provision of the settlement had any bearing on advances that players might secure from third-party funders against their expected awards under the settlement.
- There were multiple indications that the settlement language did not apply to such funding arrangements, including (i) the absence of any notice to that effect in any communication to lawyers or players from this Court or from Co-Lead Counsel Seeger; (ii) the absence of any mention of the issue in the notice sent to the class pursuant to Federal Rule of Civil Procedure 23(e) detailing the benefits and trade-offs of the Settlement Agreement; (iii) an “Update on the Settlement” sent by Mr. Seeger to class members on July 19,

2016 urging that players be “cautious” if approached by lenders who might charge excessive rates and advising former players not to pursue such funding arrangements, but giving no indication that such funding arrangements are prohibited by the Settlement Agreement, thus indirectly indicating that such advances are permitted and must be treated by Co-Lead Counsel as the subject of advice and guidance rather than a categorical prohibition; and (iv) LLF’s familiarity with other settlement agreements in mass personal injury cases, including some in which Mr. Seeger was counsel, where similar language prohibiting “Assignment of Claims” was included and there was no indication that such language prohibited class members from obtaining advances on their monetary awards under the settlement.

- At the time he helped draft the Settlement Agreement, Mr. Seeger occupied a fiduciary role as a member of the Board of Directors of Esquire Financial Holdings (“EFH”). According to public statements by EFH, Board Members for EFH also serve on the Board of Directors of Esquire Bank, a wholly-owned subsidiary of EFH, though these statements post-date the time Mr. Seeger says that he left the Board of EFH (May 2016) so it is unclear whether that shared Board structure was in place prior to his departure. Esquire marketed advances on monetary awards under the Settlement Agreement to former players during the relevant time period, and it did so with encouragement and assistance from Mr. Seeger. Those funding arrangements included language requiring that players agree to “assignment of rights” of their monetary compensation under the Settlement Agreement, language similar or identical to that contained in other funding arrangements. On their face, these advances from Esquire appear to be equally prohibited by the Court’s December 2017 order, which is based on language in § 30.1 prohibiting class members from assigning “any rights or claims relating to the subject matter of the Class Action Complaint” (emphasis added).
- LLF never solicited business on behalf of third-party funders, never urged clients to obtain funding arrangements from third-party funders, and never profited in any way from any relationship with third-party funders or the decision of any client to obtain an advance from a funder.
- Whenever an LLF client came to the firm seeking advice or assistance in relation to an advance on their expected award under the settlement, the firm spent considerable time with each client explaining the significant downsides and disadvantages to such funding arrangements and advising the client to consider alternatives. In some cases, the clients followed LLF’s advice and decided against obtaining advances. In others, the clients’ needs were so urgent and their options so few that they decided they needed to pursue an advance despite the significant downsides. In every case, the decision to obtain an advance was the client’s, reached after consultation with LLF about the reasons not to pursue such funding. In many cases, it was the possibility of ruinous consequences — homelessness, a catastrophic and

irreversible decline in health; the dissolution of a family — that impelled the client to seek an advance despite the firm’s words of caution.

- When clients did decide to seek an advance despite LLF’s advice to the contrary, the firm would sign the required documents indicating that LLF would transfer funds from the player’s future award to the funder in accordance with the terms of the advance. In some cases, the firm also assisted the client in gathering and transmitting the supporting documentation needed to complete the application process. And in some cases, the firm made efforts on behalf of the client to negotiate a lower rate from the funders and otherwise promote the interests of the client pursuing the advance.
- Following the issuance of this Court’s December 2017 Explanation and Order relating to the Third Party Funder Litigation (ECF No 9531), LLF informed its clients that it can no longer provide assistance on advances against future monetary awards under the settlement and has in fact provided no such assistance of any kind.
- Throughout the relevant time period, LLF drew no distinction and was aware of no basis for any distinction under the Settlement Agreement between the validity of advances offered by most funders and advances offered by Esquire Bank. Neither does LLF know of any basis for distinguishing between the two types of funding arrangements under the Court’s December 2017 order interpreting § 30.1. Both types of funding arrangement included “assignment of rights” to monetary awards under the settlement.
- On April 23, 2018, the Claims Administrator and the Special Masters issued a Notice of Assignment Review Determination to several LLF clients in which they opined that advances issued by Esquire Bank do not constitute prohibited assignments under § 30.1 of the Settlement Agreement. The Claims Administrator and Special Masters listed five reasons to explain their determination. None of those reasons relates to the language of § 30.1 of the Settlement Agreement, either on its face or as interpreted in this Court’s December 2017 Order. While LLF respects the diligence and good faith of the Claims Administrator and the Special Master, the firm remains in doubt concerning the validity of Esquire advances that include language requiring “assignment of rights” to monetary benefits under the settlement.
- In the expert opinion of Alfred Putnam (attached to this motion as Exhibit 2), drawing on his expertise on matters of professional responsibility and ethics, LLF has taken no improper actions in relation to advances from third-party funders and has faithfully executed its duties to its clients.

Some of the evidence establishing the facts described above was within LLF's possession when it filed its Motion for Appointment of Administrative Class Counsel, but because the firm had no notice that these matters would be relevant to that motion and was denied the opportunity to reply when Mr. Seeger introduced the issue in his response, the evidence was not "available" for purposes of the motion. Other evidence establishing these facts was not available under any standard. Some evidence did not yet exist, as with the April 23, 2018 determination of the Claims Administrator and the Special Masters. Other evidence was not known to LLF and was not reasonably knowable, as with the growing body of evidence concerning the role of Mr. Seeger in promoting funding arrangements for Esquire Bank and the impropriety of impugning the good faith efforts of LLF in assisting its clients with advances that include "assignment of rights" to monetary payments when Esquire Bank advances also include "assignment of rights" to monetary payments.

The Court made a finding adverse to LLF on these matters without the benefit of any of this evidence and issued a reprimand to the firm in an unsealed order that formed one ground for its denial of the Motion for Appointment of Administrative Class Counsel. The proffer above, describing evidence that LLF is submitting in response to the Court's March 28 Order (ECF No. 9833) and can develop further and supplement as needed, along with the Declaration of Gene Locks with attached exhibits and the Expert Opinion of Alfred Putnam (attached as Exhibits 1 and 2), constitutes "new evidence that was not available when the court" denied LLF's motion, *Simon Wrecking Co. v. AIU Insurance Co.*, 541 F. Supp. 2d 714, 715–716 (E.D. Pa. 2008) (Brody, J.), and warrants the relief requested here.

CONCLUSION

There are two issues at stake in this Motion for Reconsideration. First, there is the harm imposed by the Court's public reprimand of LLF on the issue of third-party funding, issued without notice or opportunity to be heard and creating the appearance that the Court has prejudged an issue as to which it has ordered LLF and other firms to produce documents, answer questions, and participate in an upcoming hearing. Second, there is the denial of the Motion for Appointment of Administrative Class Counsel, which this Court indicated was based in part on its adverse finding on the third-party funding issue. Given the current posture of these proceedings, LLF respectfully makes two requests.

First, LLF asks that the Court withdraw its adverse finding on the third-party funding issue in its denial of the Motion for Appointment of Administrative Class Counsel, ECF No. 9890. Whatever findings the Court may make on that issue after reviewing the responses to its March 28 order, conducting the May 15 hearing, and considering any appropriate briefing, the finding in its April 18 Order — issued without notice or opportunity to be heard and without the benefit of the evidence that LLF can provide — will linger like “a cybernetic zombie that lives on in cyberspace long after any underlying dispute has been resolved” unless it is promptly withdrawn. *Adams v. Ford Motor Co.*, 653 F.3d 299, 309 (3d Cir. 2011).

Second, LLF asks that the Court reserve judgment on the balance of this Motion for Reconsideration until after the May 15 hearing and any appropriate briefing that may follow that hearing. As the proffer in Part II and the attached

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2018, I caused the foregoing Motion for Reconsideration, to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for CM/ECF in the above-captioned matter.

/s/ Gene Locks
Gene Locks, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION

No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

MOTION FOR RECONSIDERATION/NEW TRIAL

The Alexander Objectors and Lubel Voyles, LLP (hereinafter “Movants”) file this motion pursuant to Fed. R. Civ. P. 59 for reconsideration and/or a new trial in connection with the Court’s (i) Order/Memorandum Opinion (ECF 9860/9861) granting Class Counsel’s Fee Petition and requested 5% holdback (ECF 7151), and (ii) Order/Memorandum Opinion (ECF 9862/9863) presumptively limiting the effective IRPA fee recovery to 17%.

The Courts' Order/Memorandum Opinion (ECF 9860/9861) granting Class Counsel's Fee Petition and requested 5% holdback (ECF 7151), and the Court's Order/Memorandum Opinion (ECF 9862/9863) presumptively limiting the effective IRPA fee recovery to 17% contain separate but related obvious errors of law and fact. Under Federal Rule of Civil Procedure 59(a)(1)(B) and Fed. R. Civ. P. 59(e) these clear errors of law and fact have created a manifest injustice to the Class Members. For these reasons, and those set forth in Movants' Memorandum of Law in Support, the Court should grant a new trial on the fee award, fee hold back, and fee cap.

Dated: May 2, 2018

Respectfully Submitted,

/s/ Lance H. Lubel
Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles
Texas State Bar No.: 24003121
Justin R. Goodman

Texas State Bar No.: 24036660
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com
jgoodman@lubelvoyles.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on May 2, 2018.

/s/ Lance H. Lubel
Lance H. Lubel

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-2323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 Hon. Anita B. Brody
THIS DOCUMENT RELATES TO: ALL ACTIONS	

ORDER

On March 28, 2018, this Court issued an Order indicating that *all* law firms seeking payment from the Attorney's Fees Qualified Settlement Fund must submit a sworn declaration answering the questions and attaching the documents set forth in the Order. (Civil Action 12-2323, ECF No. 9833; Civil Action 18-2323, ECF No. 2). The responses were to be filed on a docket created expressly for the purpose of reviewing these filings: Civil Action No. 18-2323. The responses were due on or before May 1, 2018.

The following law firms are seeking payment from the Attorney's Fees Qualified Settlement Fund, but they have failed to file the material ordered:

- Dugan Law Firm
- Girard Gibbs
- Herman Herman & Katz
- Rose, Klein & Mariais
- Spector Roseman

These firms have until Monday, May 7, 2018 to file the materials required by this Court in its March 28, 2018 order. Consistent with the March 28th Order, these filings must be submitted to the Court on the docket for Civil Action 18-2323. Any firm that fails to file by May 7, 2018 will be **precluded from the receipt of any award of fees from the Attorney's Fees Qualified Settlement Fund.**

s/Anita B. Brody

ANITA B. BRODY, J.

Date: May 3, 2018

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:18-md-2323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

No. 2:12-md-02323-AB
MDL No. 2323

Plaintiffs,

v.

Hon. Anita B. Brody

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

AMENDED ORDER FOR HEARING

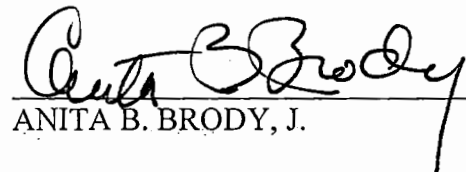
As was indicated in the March 28, 2018 Order, the Court will hold a **HEARING** on **May 15, 2018, at 10 a.m.** in Courtroom 7B on the 7th Floor of the U.S. Courthouse, 601 Market St., Philadelphia, PA., to address the allocation of class benefit fees among counsel representing the class. Co-Lead Class Counsel, Christopher Seeger, Esq., will be provided 20 minutes to present a brief summary of the analysis conducted to create the proposed allocation that has been submitted to the Court.

Any attorney who wishes to be heard as to his or her objections to the proposed allocation or in support of an independent fee petition will be provided 10 minutes to present the bases for their position. Counsel may rest their argument upon the written pleadings. No attorney is

required to appear.¹ However, any attorney who wishes to present argument must file a Notice of Intent to Argue that includes a direct reference to the docket entry for the objection or fee petition, which provides the bases for their argument. **The Notice must be filed on Civil Action 18-2323 and is due on or before May 11, 2018.**²

Co-Lead Class Counsel will be allotted time to respond to these arguments.

To the extent the arguments are not completed on May 15, 2018, the parties will be required to appear **on May 16, 2018, at 10:00 a.m. in Courtroom 7B on the 7th Floor of the U.S. Courthouse, 601 Market St., Philadelphia, PA.**


ANITA B. BRODY, J.

Date: May 7, 2018

¹ The Court's March 28, 2018 Order indicated that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel were required to appear on May 15, 2018. That requirement is withdrawn. Those attorneys may choose to appear to present their arguments, as is discussed in this Order. However, they may rest on the pleadings already submitted.

² An attorney who fails to submit a Notice in compliance with this Order will forfeit his or her opportunity for argument.

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 14TH day of May, 2018, it is **ORDERED** that the Motion for Entry of Case Management Order Governing Applications for Attorneys' Fees; Cost Reimbursements; and Future Fee Set-Aside (ECF No. 7176) is **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE

No. 2:12-md-02323-AB
MDL No. 2323

PLAYERS' CONCUSSION INJURY
LITIGATION

Hon. Anita Brody

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,
Plaintiffs,

Civ. Action No. 14-00029-AB

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,
Defendants.

**MITNICK LAW OFFICE PETITION FOR AN INDEPENDENT AWARD OF
ATTORNEYS' FEES**

Mitnick Law Office respectfully move, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Section 21.1 of the Class Action Settlement Agreement, as amended (ECF No. 6481-1) for the entry of an Order awarding attorney fees, through an independent fee application, to Mitnick Law Office for work preformed in this litigation.

The reasons supporting this fee request are based upon Co-Lead Counsel's Petition for an award of Attorneys' Fees filed under document No. 7151; the Court's subsequent Order granting Co-Lead Counsel's Petition for an award of Attorneys' Fees, filed under Document No. 9860; Page 10, Paragraph O of Co-Lead Counsel's Declaration for an Allocation of Common Benefit Attorney Fees, filed under Document No. 8447 that reads in pertinent part:

“Mitnick Law served at the direction of Co-Lead Counsel in the mulit-faceted outreach efforts to the Retired Player Community, including in-person events with alumni and other NFL players’ association, which became increasingly important after the Settlement had received Preliminary Approval”. Mitnick Law Office also relays on the attached Declaration of Craig R. Mitnick, Esquire with all Exhibits.

Dated: May 14, 2018

Respectfully submitted,

/s/ Craig R. Mitnick.

Craig R. Mitnick
MITNICK LAW OFFICE
35 Kings Highway East
Haddonfield, New Jersey 08033
craig@mitnicklegal.com
(T) 856-427-9000
(F) 856-429-2438

CERTIFICATE OF SERVICE

I hereby certify that a copy of Co-Lead Class Counsel Anapol Weiss's Notice of Intent to Argue was filed electronically with the Clerk of Court using the Cm/ECF System on May 10, 2018. The CM/ECF System will serve all counsel of record.

MITNICK LAW OFFICE
By: /s/ Craig R. Mitnick
CRAIG R. MITNICK, ESQUIRE
I.D. No. 50728
35 KINGS HIGHWAY EAST
SECOND FLOOR EAST
HADDONFIELD, NJ 08033

(856) 427-9000
Dated: May 11, 2018

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**OPPOSITION OF CO-LEAD CLASS COUNSEL TO MOTION OF THE LOCKS
LAW FIRM FOR RECONSIDERATION OF THE COURT'S DENIAL OF ITS
MOTION FOR APPOINTMENT AS ADMINISTRATIVE CLASS COUNSEL**

I. INTRODUCTION

Co-Lead Class Counsel Christopher A. Seeger (“Co-Lead Class Counsel”) respectfully submits this opposition to the Motion of the Locks Law Firm (“Locks”) for reconsideration of the Court’s April 18, 2018 denial (ECF No. 9890) of its motion to be appointed Administrative Class Counsel (ECF No. 9786) (“Motion”). Because Locks’ reconsideration motion fails to satisfy the high standard for reconsideration the Court should deny it.

II. DISCUSSION

Given courts’ interest in finality, “motions for reconsideration should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court.” *Jarzyna v. Home Properties, L.P.*, 185 F. Supp. 3d 612, 622 (E.D. Pa. 2016) (citation and internal quotation marks omitted). Indeed, “[m]otions for reconsideration are generally disfavored for a number of important reasons. One of the reasons is that they tend to waste time on issues that have been, or should have been, decided previously.” *Spear v. Fenkell*, No. CV 13-02391, 2015 WL 5582761, at *4 (E.D. Pa. Sept. 21, 2015) (internal citation omitted); *accord Rashid v. Ortiz*, No. CR 08-493, 2016 WL 7626712, at *2 (E.D. Pa. June 20, 2016) (“Reconsideration is disfavored[.]”).

Therefore, a motion for reconsideration may not “be used to give a litigant a ‘second bite at the apple’ as to an argument on which it previously did not succeed.” *Romero v. Allstate Ins. Co.*, 1 F. Supp. 3d 319, 429 (E.D. Pa. 2014); *accord U.S. Claims, Inc. v. Flomenhaft & Cannata, LLC*, 519 F. Supp. 2d 515, 526 (E.D. Pa. 2007) (reconsideration motion is not properly “grounded on a request that a court rethink a decision it has already made”) (citation and internal quotation marks omitted); *The Ltd., Inc. v. Cigna Ins. Co.*, 228 F. Supp. 2d 574, 582 (E.D. Pa. 2001) (reconsideration motions are “not to be used merely as an opportunity to reargue issues that the

court has already analyzed and determined”), *aff’d*, 29 F. App’x 88 (3d Cir. 2002); *Gen. Elec. Capital Corp. v. Stone*, No. 04-1691, 2005 WL 746420, at *1 (E.D. Pa. Mar. 29, 2005) (“A motion for reconsideration is not an opportunity for an unsuccessful party to rehash arguments previously considered by the Court.”).

Rather, “[t]he purpose of a motion for reconsideration is to correct *manifest* errors of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985) (emphasis added). A movant must show either “(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Max’s Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999); *accord Smith v. City of Chester*, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994); *Rashid*, 2016 WL 7626712, at *2.¹

Here, Locks points to no manifest error in the Court’s April 18 denial of his motion for appointment as “Administrative Class Counsel.” Instead, Locks is merely peeved at the result and, in particular, over not having been afforded an opportunity to file a reply in order to present evidence on the issue of third-party funding arrangements. *See* Motion at 6-12. That is unavailing.²

¹ Thus, there is no basis for reconsideration when a party merely revisits issues already decided by citing different case law under the guise of pointing to manifest error. *See Borough of Lansdale v. PP & L, Inc.*, 503 F. Supp. 2d 730, 734 (E.D. Pa. 2007). Similarly, “[a] litigant that fails in its first attempt to persuade a court to adopt its position may not use a motion for reconsideration either to attempt a new approach or correct mistakes it made in its previous one.” *Romero*, 1 F. Supp. 3d at 429 (citation and internal quotation marks omitted).

² Locks’ contention that the matter of his involvement in third-party funding arrangements was an error of law is flatly incorrect. *See* Motion at 3, 5. That issue involved no question of law.

Locks focuses on the Court's observation concerning its role in facilitating assignments of Class Members' Monetary Awards to third-party funders, implying that this was the determinative factor in the Court's ruling, which it was not. Locks' role in facilitating third-party funding arrangements was only *one* of the considerations that bore on the Court's denial of its motion. *See* ECF No. 9890, at 2. Even if that were completely disregarded and Locks had never facilitated a single assignment of a client's Monetary Award, Locks simply presented an unconvincing case for being in charge of the implementation of the Settlement. Co-Lead Class Counsel will not rehash here all of the other points made in opposition to the motion. Suffice it to say that Co-Lead Class Counsel's 36-page memorandum and 19-page Declaration in opposition to Locks' Motion (ECF Nos. 9885, 9885-1) set forth manifold weaknesses in Locks' motion.

III. CONCLUSION

For the foregoing reasons, the Court should reject Locks' attempt to revisit the Court's denial of its motion.

Date: May 15, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
cseeger@seegerweiss.com
Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on May 15, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger



Steven F. Molo
Molo Lamken LLP
430 Park Avenue
New York, NY 10022
T: 212-607-8170
F: 212-607-8161
smolo@mololamken.com
www.mololamken.com

May 16, 2018

BY ECF

The Honorable Anita B. Brody
United States District Court
Eastern District of Pennsylvania
7613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1797

Re: *In re: National Football League Players' Concussion Injury Litigation*,
Civ. No. 2:12-MD-2323-AB

Dear Judge Brody:

I am making good on my offer at yesterday's hearing to provide the Court with record citations where the Faneca Objectors argued for the four improvements to the preliminarily-approved settlement that were ultimately accepted by the parties. To be clear, these are benefits that were not in the Revised Settlement as preliminarily approved, but were later added following the fairness hearing and before final approval, after Your Honor suggested that they would "enhance the fairness, reasonableness, and adequacy" of the settlement. Dkt. 6479.

NFL Europe. The Faneca Objectors argued that the settlement should provide eligible season credit for NFL Europe in their opposition to preliminary approval, Dkt. 6082 at 28; in their motion for discovery, Dkt. 6169-1 at 6; in their objection, Dkt. 6201 at 34-36; in their supplemental objection, Dkt. 6420 at 10; at the fairness hearing, Dkt. 6463 at 89:5-92:2, Dkt. 6469 at 18-20, 28; and in their post-fairness hearing brief, Dkt. 6455 at 20-22, 30.

BAP Cap. The Faneca Objectors argued that the BAP Fund should be uncapped in their opposition to preliminary approval, Dkt. 6082 at 13, 15; in their motion for discovery, Dkt. 6169-1 at 11; in their objection, Dkt. 6201 at 72; in their supplemental objection, Dkt. 6420 at 10; at the fairness hearing, Dkt. 6463 at 108:9-109:10, 113:24-25, Dkt. 6469 at 31, 33; and in their post-fairness hearing brief, Dkt. 6455 at 22, 30. As Your Honor raised the question specifically concerning our BAP objection, I enclose a copy of a slide used at the fairness hearing regarding that point.

Waiver of Appeal Fee in Cases of Financial Hardship. The Faneca Objectors challenged the \$1,000 appeal fee in their opposition to preliminary approval, Dkt. 6082 at 33-34

The Hon. Anita B. Brody

- 2 -

May 16, 2018

& n.43; in their motion for discovery, Dkt. 6169-1 at 7; in their objection, Dkt. 6201 at 76-77; at the fairness hearing, Dkt. 6463 at 112:13-21, 113:6-13, 114:14-15, Dkt. 6469 at 30, 33; and in their post-fairness hearing brief, Dkt. 6455 at 23, 31.

Death with CTE. The Faneca Objectors argued for increased compensation for Death with CTE in their motion to intervene, Dkt. 6019-1 at 15-18; in their opposition to preliminary approval, Dkt. 6082 at 20-26; in their motion for discovery, Dkt. 6169-1 at 3-5; in their objection, Dkt. 6201 at 21-32; in their supplemental objection, Dkt. 6420 at 9-10; at the fairness hearing, Dkt. 6463 at 72:23-89:4, Dkt. 6469 at 2-17, 28; and in their post-fairness hearing brief, Dkt. 6455 at 2-20, 30.

Obviously, these enhancements would never have happened without Your Honor's suggestion that they be included, but that does not diminish the Faneca Objectors' right to be compensated for their role in identifying the deficiencies and pressing for their correction over the opposition of Co-Lead Class Counsel, who stated that he had "obtain[ed] the best overall deal we could for plaintiffs." Dkt. 6463 at 39:19-20. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (holding that objectors entitled to fees where district court addresses settlement deficiencies raised by objectors); *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002) (a court cannot "den[y] a fee to the objectors . . . on the ground that [it] had already decided, without telling anybody," that the settlement was deficient); *Green v. Transiron Elec. Corp.*, 326 F.2d 492, 498-99 (1st Cir. 1964) (similar); *Fraley v. Facebook, Inc.*, No. C 11-1726, 2014 WL 806072, at *2 (N.D. Cal. Feb. 27, 2014) (similar); *Edwards v. Nat'l Milk Producers Fed'n*, No. 11-cv-04766, 2017 WL 4581926, at *1-2 (N.D. Cal. Sept. 13, 2017) (awarding objectors' fees despite recognizing that "Court's own review would likely have resulted in" correction of settlement defect).

As noted in our papers and as I explained at yesterday's hearing, the value of the improvements brought about by the changes addressing the four objections described above is \$122.6 million. *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ.A. 03-4578, 2005 WL 1213926, at *16 (E.D. Pa. May 19, 2005), which I mentioned during the hearing, cites to the Class Action Reporter, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 170, for the proposition that the average multiplier in settlements valued over \$100 million is 4.5, which is consistent with the lodestar cross-check multiplier of 4.6 applied in our fee petition (which was filed before class counsel had filed their petition).

Respectfully,

/s/ Steven F. Molo

Steven F. Molo

Enclosure

Cc: All Counsel by ECF

Proposed Revisions for a Fair and Adequate Settlement

Lift the cap on the BAP

Extend the BAP to the full term of the Settlement

Eliminate the opt-in requirement

Make it easier to get a qualifying diagnosis

“Even up” the appeal process

Certificate of Service

I hereby certify that, on May 16, 2018, the foregoing letter was filed with the Clerk of the Court using the CM/ECF system, which will serve all parties.

/s/ Steven F. Molo

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**OPPOSITION OF CO-LEAD CLASS COUNSEL TO MOTION OF THE ALEXANDER
OBJECTORS AND LUBEL VOYLES, LLP FOR RECONSIDERATION/NEW TRIAL**

I. INTRODUCTION

What an odd motion. As developed below, there is no cognizable request for relief here, only a last-ditch attempt by some longstanding Objectors to throw more sand in the gears. The Alexander Objectors want a “new trial” from this Court’s award of attorneys’ fees in a class action settlement. The Motion cannot be a request for a new trial, because there never was one. This bizarre request also cannot be a Rule 59(e) motion to amend the judgment because it seeks to vacate a fee award altogether. Nor could this be a proper motion for reconsideration, because

under the Court's Local Rules that must be filed within 14 days. Moreover, these Objectors have already filed their notice of appeal, so they will have their hearing in the Third Circuit.

Specifically, the Alexander Objectors and the law firm of Lubel Voyles, LLP ("Movants") filed a motion for "reconsideration/new trial" (ECF No. 9926) ("Motion") that attacks the Court's April 5, 2018 decision (i) awarding the full \$112.5 million in attorneys' fees and costs requested in Co-Lead Class Counsel's February 2017 common benefit fee petition (while reserving an allocation among counsel of the \$106,817,220.62 fee component of that award pending a now-concluded May 15, 2018 hearing); and (ii) reserving a final determination on the amount of any holdback or set-aside from Class Members' Monetary Awards for the purpose of funding common benefit work performed in furtherance of the Settlement's implementation (while maintaining the provisional holdback of five percent from such awards pending that determination). *See* ECF Nos. 9860-61; *see also* ECF Nos. 9833, 9970 (hearing Orders).¹ The Motion also attacks the Court's separate decision, issued the same day, that accepted Professor William B. Rubenstein's recommendation and adopted a presumptive 22 percent cap on the fees of Class Members' individually-retained counsel. *See* ECF Nos. 9862-63.²

The Motion, putatively filed pursuant to Rule 59 of the Federal Rules of Civil Procedure, is really a motion for reconsideration under this District's Local Rules because it seeks to revisit the Court's ruling with respect to arguments that were previously raised. As such, the Motion was filed beyond the 14-day deadline for reconsideration motions set forth in the Local Rules. In any

¹ The Motion does not challenge the Court's incentive/case contribution awards to the three present and past Class Representatives.

² One day after filing the Motion, Movants separately filed a Notice of Appeal from the Court's decisions to the Third Circuit. *See* ECF No. 9960. That appeal has been assigned docket no. 18-2012 in the Third Circuit. Thus, Movants are attacking the Court's April 5 decisions on two separate fronts.

event, Movants fail to satisfy the high standard required for the Court to change its rulings. Thus, even if timely, the Motion fails because it is a long-disfavored attempt at a do-over. The Court should accordingly deny it.

II. DISCUSSION

A. The Court Should Deny the Motion as Untimely Filed

Movants caption their motion in part as one for a “new trial” under Rule 59. But there was no trial here – jury or non-jury. Hence Rule 59 is inapplicable. *See Parks v. Ford*, 68 F.R.D. 305, 307 n.2 (E.D. Pa. 1975) (“Rules 59(a) and 59(c) deal with motions for new trials. No trial was held in the instant case, and thus these rules are inapposite.”). Movants also invoke Rule 59(e). *See* ECF Nos. 9926 (at 1), 9926-1 (at 3, 12). That rule, though – which provides for motions to alter or amend judgments – is inapplicable to post-judgment applications for attorneys’ fees. *See White v. New Hampshire Dep’t of Emp’t Sec.*, 455 U.S. 445, 450-51 (1982) (Rule 59(e) “was adopted to mak[e] clear that the district court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment”; “a request for attorney’s fees . . . raises legal issues collateral to the main cause of action – issues to which Rule 59(e) was never intended to apply”) (citation, internal quotation marks, and footnotes omitted); *see also* Fed. R. Civ. P. 59(e), 1946 advisory comm. note (Rule 59(e) “deals only with alteration or amendment of the original judgment in a case”) (emphasis added); *Jackson v. Maui Sands Resort, Inc.*, No. 1:08 CV 2972, 2009 WL 10688203, at *1-2 (N.D. Ohio Apr. 23, 2009) (Rule 59(e) held inapplicable to award of attorneys’ fees; treating 59(e) motion as motion for reconsideration).

In reality, the Motion is purely one for reconsideration in order to reverse this Court’s rulings respecting attorneys’ fees. Indeed, the Motion is concurrently captioned as one for “*Reconsideration/New Trial*.” ECF Nos. 9926 (at 1), 9926-1 (at 1) (emphasis added). A perusal

of the body of Movants' supporting memorandum confirms that the Motion merely seeks to revisit rulings with which Movants are dissatisfied. *See* Section II.B, *infra*.

Because the Motion is solely one for reconsideration, under this Court's Local Rules, it should have been filed within fourteen days of the Court's April 5 decisions (that is, by April 19, 2018). *See* E.D. Pa. Civ. R. 7.1(g). Movants, however, filed it on May 2, 2018, which was twenty-eight days after the Court's decisions. It appears that Movants concurrently couched the Motion as one for "new trial" and invoked Rule 59(a) and (e) so as to avail themselves of the more generous 28-day deadline in Rules 59(b) and (e), even though there was no "trial" of any kind and the fee petition proceedings long postdate the Court's May 8, 2015 Amended Final Order and Judgment. The Court should see through this subterfuge and accordingly deny the Motion as out of time.

B. Movants Improperly Seek Nothing More Than a Do-Over

Even were the Motion timely, the Court should reject it because it is nothing more than a repackaging of arguments previously made.

It is well settled that a motion for reconsideration is not to "be used to give a litigant a 'second bite at the apple' as to an argument on which it previously did not succeed." *Romero v. Allstate Ins. Co.*, 1 F. Supp. 3d 319, 429 (E.D. Pa. 2014); *accord Jarzyna v. Home Properties, L.P.*, 185 F. Supp. 3d 612, 622 (E.D. Pa. 2016) ("[M]otion[s] for reconsideration . . . may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court.") (citation and internal quotation marks omitted); *U.S. Claims, Inc. v. Flomenhaft & Cannata, LLC*, 519 F. Supp. 2d 515, 526 (E.D. Pa. 2006) (reconsideration motion is not properly "grounded on a request that a court rethink a decision it has already made") (citation and internal quotation marks omitted); *The Limited, Inc. v. Cigna Ins. Co.*, 228 F. Supp. 2d 574, 582 (E.D. Pa. 2001) (reconsideration motions are "not to be used merely as an opportunity to reargue issues that

the court has already analyzed and determined”), *aff’d*, 29 F. App’x 88 (3d Cir. 2002); *Gen. Elec. Capital Corp. v. Stone*, No. 04-1691, 2005 WL 746420, at *1 (E.D. Pa. Mar. 29, 2005) (“A motion for reconsideration is not an opportunity for an unsuccessful party to rehash arguments previously considered by the Court.”).

Indeed, one of the reasons why reconsideration motions are generally disfavored is that “they tend to waste time on issues that have been, or should have been, decided previously.” *Spear v. Fenkell*, No. 13-02391, 2015 WL 5582761, at *4 (E.D. Pa. Sept. 21, 2015) (internal citation omitted). The Motion is a textbook illustration of this kind of abuse. It simply rehashes a slew of arguments – such as whether time records should be produced, that awarding fees on the basis of the percentage-of-the-common fund method is premature here because the Settlement cannot be reliably valued and related challenges to the Settlement’s valuation, whether a multiplier should be applied to the lodestar of Co-Lead Class Counsel and others who performed common benefit work, whether there should be a holdback or set-aside from Monetary Awards for the purpose of compensating implementation-phase common benefit work, and whether there ought to be a cap on individually-retained lawyers’ fees, *see* Brief³ at 3-30 – that Movants previously raised, either in direct response to Class Counsel’s fee petition, in motions that they filed related to the fee petition, or in response to Professor Rubenstein’s Report. *Compare* ECF No. 9926-1 *with* ECF Nos. 7355, 7533, 7534, 8395, 8396-1, 8449, 9554.

Nor is the Motion viable merely because Movants have tweaked previous arguments, cited additional cases, or labelled the Court’s holdings as manifestly or clearly erroneous. *See Romero*, 1 F. Supp. 3d at 429 (“A litigant that fails in its first attempt to persuade a court to adopt its position may not use a motion for reconsideration either to attempt a new approach or correct mistakes it

³ “Brief” refers to the memorandum of law in support of the Motion (ECF No. 9926-1).

made in its previous one.”) (citation and internal quotation marks omitted); *Borough of Lansdale v. PP & L, Inc.*, 503 F. Supp. 2d 730, 734 (E.D. Pa. 2007) (no basis for reconsideration when party merely revisits issues already decided by citing different case law under guise of pointing to manifest error).

Similarly, even were it proper as a motion under Rule 59(e), the Motion nonetheless fails because Movants point to no newly discovered evidence, intervening change in the law, or need to correct a manifest or clear error of law or fact or prevent manifest injustice. *E.g.*, *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011); *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010); *Blue Mountain Mushroom Co. v. Monterey Mushroom, Inc.*, 246 F. Supp. 2d 394, 398 (E.D. Pa. 2002).⁴ Rather, what they do is dress up their mere disagreement with the Court’s determinations as manifest or clear error.

Co-Lead Class Counsel will not engage in a page-by-page, point-by-point, subpoint-by-subpoint refutation of every one of Movants’ rambling arguments. A detailed discussion is unnecessary and unwarranted because Co-Lead Class Counsel has refuted all of those arguments in sundry earlier filings,⁵ and one of the arguments (namely, with respect to the presumptive cap on individual attorneys’ fees; *see* Brief at 27-30) does not even pertain to the common benefit fee petition and the holdback request. Instead, Co-Lead Class Counsel will address Movants’ principal contention concerning the Court’s review of time records *in camera*, and then briefly touch on

⁴ Although Movants concurrently style the Motion as a Rule 59(a) motion for “new trial,” such a motion may be granted only where (1) the verdict is against the weight of the evidence, (2) there have been substantial errors in the admission of evidence or in the court’s instructions to the jury, or (3) counsel engaged in improper conduct that had a prejudicial effect upon the jury. *Stainton v. Tarantino*, 637 F. Supp. 1051, 1078 (E.D. Pa. 1986) (citing cases). Because there was no trial here, none of these grounds is remotely applicable.

⁵ *See* ECF Nos. 7464 (at 15-30), 7606 (at 14-25), 8440, 8934 (at ¶¶ 17, 103-08), 9552 (at 4-11).

Movants’ other key points. If the Alexander Objectors want to raise all of these issues again, they should save them for their appeal.

1. The Court’s Review of Time Records *In Camera* Was Proper

Movants first complain that the Court’s *in camera* review of the time records of Co-Lead Class Counsel and other firms having performed common benefit work (ECF No. 9860, at 15) resulted in a “manifest injustice.” Brief at 3-11. That argument is completely devoid of merit.

The Court’s review of time records *in camera* was entirely proper. *In camera* review of billing records guards against privileged or confidential matters being divulged. *See Team Sys. Int’l, LLC v. Haozous*, No. 16-6277, 2017 WL 3616326, at *3 (10th Cir. Aug. 23, 2017) (citing cases). Courts often review time records *in camera*. *E.g., In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) (district court reviewed time records *in camera* in connection with percentage-of-the-fund fee application); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 188 (W.D.N.Y. 2005); *Seiffer v. Topsy’s Int’l, Inc.*, 80 F.R.D. 272, 278 (D. Kan. 1978); *Ott v. Mortg. Inv’rs Corp. of Ohio, Inc.*, No. 3:14-CV-00645-ST, 2016 WL 54678, at *2 (D. Or. Jan. 5, 2016); *Pabst v. Genesco Inc.*, No. C 11-01592 SI, 2012 WL 3987287, at *1 (N.D. Cal. Sept. 11, 2012); *FTR Consulting Grp. ex rel. Cel-Sci Corp. v. Advantage Fund II Ltd.*, No. 02 CIV. 8608 (RMB), 2005 WL 2234039, at *2 (S.D.N.Y. Sept. 14, 2005).

Movants’ assertion that the *in camera* review violated what they call the “Open Access Doctrine” is specious. *See* Brief at 11. The case upon which they rely, *In re Cendant Corp. Litig.*, 260 F.3d 183 (3d Cir. 2001), is inapposite. *Cendant* involved a district court’s sealing of bids for appointment as lead counsel in a PSLRA case – which the Third Circuit held to be a violation of the public’s right to open access to the courts because those bids were judicial records. *See id.* at

192-98. That is a far cry from time records – which are the property of counsel, not judicial records – being reviewed *in camera* because of the confidential information they often contain.

Nor did Movants have any right to pore over time records. *See Cassese v. Williams*, 503 F. App'x 55, 58 (2d Cir. 2012) (“[W]e are aware of no authority holding that class counsel must open its books to objectors for inspection by virtue of filing a fee motion.”). Their continued insistence on public disclosure of time records once again manifests their obdurate refusal to accept that this is a constructive common fund, not a fee-shifting, case, and a percentage-of-recovery analysis therefore applied to the aggregate fee award. *See* ECF Nos. 7151-1 (at 39-40 (citing cases)), 7464 (at 19-20 (same)). The Court so found. ECF No. 9860, at 5-6.

That being the case, a lodestar cross-check “need entail neither mathematical precision nor bean-counting.” *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005). A cross-check is “not a full-blown lodestar inquiry” and “does not trump the primary reliance on the percentage of common fund method.” *Id.* at 306 n.16, 307 (quoting *Report of the Third Circuit, Selection of Class Counsel*, 208 F.R.D. 340, 423 (2002)); accord *In re Cendant Corp. Litig.*, 264 F.3d 201, 285 (3d Cir. 2001) (cross-check entails “an *abbreviated* calculation of the lodestar amount”) (emphasis added); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.”); ECF No. 7606, at 24-25 (citing additional cases).⁶

⁶ In any event, the Court did not rubber stamp the lodestar information reflected in firms’ time records. It noted that although the hours claimed were reasonable, the hourly rates billed by some firms were not, and it accordingly employed a blended billing rate in conducting its cross-check, resulting in a reduced lodestar of approximately \$36.1 million (as compared to the approximately \$40.6 million claimed, *see* ECF No. 7464-1, at 2 (¶ 2), or a multiplier of 2.96 – which was still well with the norm in this Circuit. ECF No. 9860, at 15-16.

For this reason, Movants were not entitled to examine firms’ time records or notice of the Court’s *in camera* review.⁷ See *In re Diet Drugs*, 582 F.3d 524, 539 (3d Cir. 2009) (rejecting objection that district court, which performed lodestar cross-check, “should have considered and made public Class Counsel’s individual billing records,” approving reliance on time summaries, and noting that consideration of individual billing records is a “time-consuming process”); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998) (where lodestar calculation was employed merely as cross-check, district court acted within its discretion in denying discovery of time records); see also *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *18 (N.D. Ohio Sept. 23, 2016) (objectors “ha[d] no right to see Class Counsel’s fee and expense records,” especially where “any such review by objectors would not affect the Court’s ultimate conclusion”).

The scrutiny of time records that Movants desire would only have resulted in needless prolongation of the fee proceedings as Movants followed up with yet more contrived or persnickety objections. More fundamentally, it is simply inconsistent with a rough validation of the asserted lodestar that is performed in a lodestar cross-check. In short, far from being manifestly erroneous, the Court’s review of time records *in camera* was eminently proper.

2. Movants’ Remaining Arguments Have Already Been Thoroughly Addressed

Also without merit is Movants’ insistence that a percentage of the recovery analysis was inappropriate because the Settlement cannot be reliably valued at present. See Brief at 12-24.

Movants’ suggestion that the Court should adopt a wait-and-see approach and further delay an award of common benefit fees until there is further information about whether Monetary Awards are being issued in line with projections is unavailing. *First*, there is no requirement that

⁷ Movants do not explain what purpose having notice of the *in camera* review would have served.

payment of fees must await the distribution of settlement proceeds to class members. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 479-80 (S.D.N.Y. 1998) (settlement not objectionable merely because attorneys' fees would be disbursed before class members' receipt of their allocations) (citing cases); *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-98 (11th Cir. 1999) (no requirement that court must consider only actual payout to class in determining attorneys' fees). *Second*, a court need not be in a position to make a pinpoint calculation of the value of the recovery for the class; a reasonable estimate suffices. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d at 334. *Third*, even under Movants' lower valuation of the Settlement in their earlier submissions, the fees requested (and subsequently awarded) would be equivalent to under 15 percent of the recovery – well within norms, even for so-called “mega-fund” cases. *See* ECF No. 7464, at 21.

At any rate, Co-Lead Class Counsel has already refuted Movants' contentions about the Settlement's valuation, including the secondary carping of Movants and others that the Settlement is either failing or yielding results below expectations.⁸ *See* ECF Nos. 7464 (at 15-21), 8440 (at 7-8), 9552 (at 4-5), 9552-1 (at 5-12), 9885 (at 2-5, 7-8). According to the Claims Administrator's most recent status report filed with the Court, as of April 10, 2018, there were 377 payable Monetary Award claims, representing a total of \$411,273,005 in awards. ECF No. 9882-1, at 22 (Decl. ¶ 33). Five weeks later, the most current data available on the dedicated Settlement website reflect that, as of May 14, 2018, there have been 411 payable Monetary Award claims, representing a total of \$423,903,292 in awards. *See* www.nflconcussionsettlement.com (last accessed May 16,

⁸ Movants have shifted gears. Previously, they disputed Co-Lead Class Counsel's valuation of the Settlement and offered their own, lower one. Now that Co-Lead Class Counsel has twice adduced updated expert valuation reports showing that the Settlement has a higher value than originally projected (*see* ECF Nos. 7464-12 [at 4-5], 9552-1 [at 6-8]), Movants contend that any valuation of the Settlement would be speculative. *Compare* ECF No. 7355, at 34-38 with Brief at 12-13.

2018). More importantly, the Court has already implicitly (and correctly) rejected Movants' argument, noting that "money [is] now flowing to Class Members." ECF No. 9860, at 4. Movants' suggestion that the Court has awarded fees merely on the basis of 20,000+ registrations under the Settlement (Brief at 19) is thus sheer nonsense. Simply put, the Settlement *is* working and *can* be reliably valued, and Movants demonstrate nothing to the contrary save their *ipse dixit*.⁹

Movants' complaints about the imposition of a set-aside from Monetary Awards (Brief at 24-27) can quickly be dismissed. The fundamental shortcoming in their arguments is that the Court has *not* adopted a set-aside. Rather, the Court expressly reserved decision on the set-aside request while provisionally maintaining a five-percent holdback until such time as it acquires more information in order to determine precisely how much money will be needed to compensate implementation-related common benefit work over the Settlement's lengthy lifespan. *See* ECF No. 9862, at 17-18.¹⁰

Nor, contrary to Movants' uninformed characterization, is the implementation work "unspecified." *See* Brief at 24. Co-Lead Class Counsel has provided much detail concerning the extensive implementation work performed, and has also explained the need to fund the transition of implementation oversight to other counsel over the 65-year course of the Settlement. *See* ECF Nos. 7151-2 (at 32-35 [¶¶ 107-18]), 7464 (at 32-44), 8447 (at 15-19 [¶ 20]), 9552 (at 6-9).

Movants' assertion that no set-aside is warranted because the initial January 2014 settlement did not call for one and the operative February 2015 Settlement neither increased the

⁹ That a number of Monetary Awards are the subject of audit (*see* Brief at 20, complaining of "quagmire" of audits) does nothing to alter the salient fact that the Settlement is delivering promised benefits. Measures put in place to ferret out potential fraud maintain the Settlement's integrity and in no way render its benefits illusory.

¹⁰ The Court also stated that, in accordance with Professor Rubenstein's recommendation, it plans to set aside some portion of the common benefit fee award for the purpose of compensating implementation-related work. *See* ECF No. 9860, at 18.

Class's recovery nor imposed any additional obligations on Co-Lead Class Counsel (Brief at 25-26) is equally uninformed. To begin with, a rejected settlement agreement should have no bearing on the set-aside request. That aside, Co-Lead Class Counsel has already explained that the operative Settlement Agreement both (a) enhanced the Class's recovery by uncapping the Monetary Award Fund (thereby ensuring that every Class Member demonstrating a Qualifying Diagnosis will receive the Monetary Award for which he is eligible without fear of the Monetary Award Fund's exhaustion); and (b) altered the dynamics of Co-Lead Class Counsel's interactions with the NFL in that it created an incentive for the NFL to vigorously challenge claims and seek more restrictive interpretations of the Settlement in order to minimize its outlay over the Settlement's 65-year course, thereby requiring greater than anticipated work by Co-Lead Class Counsel to combat those efforts. ECF No. 9552, at 6-8.

Finally, Movants' arguments concerning the Court's adoption of a presumptive 22 percent cap on individual attorneys' fees (Brief at 27-30) concern an issue as to which Co-Lead Class Counsel has taken no position. Therefore, no substantive response is necessary. The only point that Co-Lead Class Counsel will make with respect to Movants' protest against the individual counsel fee cap is that their accusation that he has a conflict of interest in representing the Class whereas privately-retained lawyers are "unconflicted advocate[s]" (Brief at 27) – an argument that they already raised, *see* ECF No. 9554, at 6 – is vacuous. Co-Lead Class Counsel and his firm have repeatedly advocated on behalf of and assisted both individual Class Members and individually-retained counsel on a wide range of issues and matters – in many instances where Class Members' individual counsel have failed to even return their telephone calls. *E.g.*, ECF Nos. 8447 (at 15, 17-18 [¶¶ 20(g), (e)], 9552 (at 6-9), 9885 (at 7-14, 18-18, 21-23, 29-30). Moreover, as the Court already found, the extensive common benefit work performed by Co-Lead Class

Counsel and others reduced the amount of work required of individually-retained private counsel and financially benefitted those lawyers, “even though they did not bear the costs.” ECF No. 9862, at 4-5.

If anything, instead of continuing to carp about the Settlement’s value, Movants have Co-Lead Class Counsel to thank for having demonstrated that the value is substantially greater than Professor Rubenstein had originally estimated, and that because the aggregate common benefit fee award amounts to just under 11 percent of that value, a cap of 22 percent on individually-retained lawyers’ fees, rather than the 15 percent that he had initially recommended, was appropriate. *See* ECF No. 9571, at 3-4. Thus, individually-retained counsel will directly benefit from the evidence that Co-Lead Class Counsel adduced concerning the Settlement’s valuation, earning nearly 47 percent more in fees on their retainers than they might otherwise have.

III. CONCLUSION

For the foregoing reasons, the Court should deny the Motion.

Date: May 16, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
cseeger@seegerweiss.com
Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on May 16, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL : MDL
LEAGUE PLAYERS' CONCUSSION :
INJURY LITIGATION :
:
: NO. 2012-2323

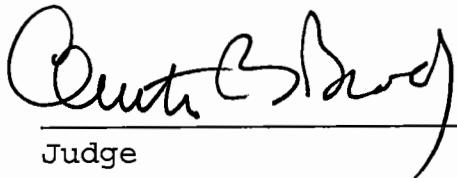
O R D E R

AND NOW, this 16th day of May, 2018, it is Ordered that
the attached hard copy of attorney Christopher Seeger's power-
point presentation from the 05-15-2018 hearing is made a part of
the record.

ATTEST:

or BY THE COURT

BY: _____
Deputy Clerk



Judge

Civ 12 (9/83)

NFL CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

Hearing on Fee Allocation

May 15, 2018

Co-Lead Class Counsel Christopher A. Seeger

LITIGATION OVERVIEW & BACKGROUND

MDL Formed in 2012

Unique & Challenging Claims

- Complex & Evolving Science
- Significant Legal Issues – Preemption
- Substantial Alternative Causation & Other Trial Defenses
- Statute of Limitations Issues

Novel Litigation Course

- Early Stay on Discovery
- Litigation of Motions to Dismiss
- Circumstances Dictated Consideration of Early Resolution

SETTLEMENT

Extensive Negotiations

Months of Pre-Term Sheet Negotiations – Mediator Driven & Private

Term Sheet – August 29, 2013

Two Rounds of Settlement Negotiations after Initial Term Sheet

Preliminary Approval – July 7, 2014

Final Approval – April 22, 2015

Third Circuit Affirms Approval – April 18, 2016

United States Supreme Court Denies Cert Petitions – December 19, 2016

INNOVATIVE SETTLEMENT FRAMEWORK

Faced the Challenges of *Amchem* and *Ortiz* for Classwide Settlement of Personal Injury Claims

- **Uncapped Fund Addresses Major *Amchem* Concern**
- **Monetary Awards Keyed to Seasons (proxy for exposure) and Age at Diagnosis (tied to background rates)**

The BAP Program Is More than a Medical Monitoring Program

- Created Our Own HMO for the Concussion Settlement
- Extensive Neuropsychiatric Assessment Designed by Experts in the Field
- Catches Impairment Early - Healthcare Professionals Can Act to Slow Degeneration
- Source of Information for Future Medical Research

65-Year MAF Program

- **Substantial Monetary Awards**
- **Provides Significant “Insurance” for Younger Retired Players**

Lien Resolution with Substantial Discounts

ASSEMBLED A TEAM OF EXPERIENCED CLASS ACTION ATTORNEYS

Prof. Samuel Issacharoff

- Bonnie and Richard Reiss Professor of Constitutional Law, NYU
- Nationally Renowned Expert on Class Actions - *VW Clean Diesel*, *BP Oil Spill*
- Argued Before 3rd Circuit – *DB Investments*, *Diet Drugs*, and *Avandia*

Arnold Levin (Sub-Class One Counsel)

- Lead Counsel in the *Diet Drugs Litigation* and *Chinese-Manufactured Drywall*
- Leadership in *In re CertainTeed (Shingles)*, *In re TMI*, and *Asbestos School Litig.*

Dianne Nast (Sub-Class Two Counsel)

- Lead Counsel in *Generic Pharm. Pricing*, *Augmentin Antitr.*, and *Paxil Antitr.*
- Leadership in the *Diet Drugs Litigation*, *Lipitor Antitr.*, and *Skelaxin Antitr.*

INNOVATIVE SETTLEMENT FRAMEWORK

“The performance of Class Counsel regarding this complex Settlement Agreement has been extraordinary. . . . Perhaps the strongest factor weighing in favor of the acceptance of Class Counsel’s fee request is the final factor that takes into account ***the innovative terms*** of this Settlement Agreement. ... Without ***these innovative terms***, a settlement might not have been possible under current Supreme Court precedent. This factor weighs heavily in Class Counsel’s favor.”

2018 WL 1635648, at * 7, 8 (E.D. Pa. April 5, 2018)

“This settlement will provide nearly \$1 billion in value to the class of retired players. It is a testament to the players, researchers, and advocates who have worked to expose the true human costs of a sport so many love.”

821 F.3d 410, 447-48 (3d Cir. 2016)

SETTLEMENT PARTICIPATION

Substantial Efforts to Ensure Broad Participation

- Town-Hall Meetings at NFL and Alumni Events
- Ongoing Television and Radio Interviews
- Conference Calls with Hundreds of Players
- Targeting of Key Media Markets in Advance of Registration

The Result: Unprecedented Class Member Participation

20,497 Total Registrations

- 15,982 Retired NFL Football Players
- 3,285 Representative Claimants

Extremely High Participation Rates

THE SETTLEMENT: FIRST YEAR RESULTS

Monetary Awards

- 411 MAF Notices Totaling Over \$423 million
- Awards Exceed Projected Claim Value for the First 10 years

BAP Examinations

- 12,755 Retired NFL Football Players Are Eligible for BAP Exams
- 4,077 Retired NFL Football Players Currently Scheduled or Scheduling
- 2,422 Retired NFL Football Players with Reports from At Least One Examination
- The Examinations Have Identified Qualifying Diagnoses in Several Men
 - ❖ 18 Level 1 Neurocognitive Impairment
 - ❖ 28 Level 1.5 Neurocognitive Impairment
 - ❖ 16 Level 2 Neurocognitive Impairment

THE SETTLEMENT: FIRST YEAR RESULTS

Protection of Settlement Class From Predatory Practices

- Stopping Misrepresentations
- Litigation Funding Abuses

Advocacy for Favorable Interpretations and Procedures

- Unrepresented Players Can Navigate Registration and Claims
- Definition of “Generally Consistent”
- Definition of “Eligible Season”
- “Downgrading of Claims”
- 88 Plan

Support of Players and their Counsel

- Engagement with Hundreds of Players and their Counsel
- Support at Every Stage – From Registration to Monetary Awards

COMMON BENEFIT FEES & COSTS

Seeger Weiss Collected Common Benefit Time and Expenses

- Solicited Time from All Firms Appearing in MDL
- Review and Audit of Time and Expenses Submitted
- CMO-5 Common Benefit Considerations

Time and Expenses Submitted for 24 Firms

- Declarations from Each Firm Presented with the Fee Petition
- Total Submitted Lodestar: \$40,559,978.60 (51,068 hours)
- Total Submitted Expenses: \$5,682,779.38

Court-Approved Fee Petition

- \$112.5 million for fees, costs, and incentive awards
- Decision on the 5% Holdback Reserved

ALLOCATION OF ATTORNEYS FEES AMONG COUNSEL

Court Directed Recommendations

- **Co-Lead Class Counsel Directed All Common Benefit Work**
- **Knew Firsthand the Value of Each Firm's Contributions**
- **Request for Proposal from Lead Counsel is Common. *In re: IPO***

Co-Lead Class Counsel Reviewed Time Submissions and Declarations from Each Firm

Considered Three Key Criteria:

1. Appointed Role in Litigation
2. Value of Engagement in the Litigation
3. Contributions to the Settlement

ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL

Proposed Multipliers Range from .75 to 3.885

Brian Fitzpatrick: "The net result of the adjustment made by lead class counsel in this case left the original lodestars of the firms here with adjustments over a range of multipliers from 0.75 to 3.885. This is a spread of 1:5.2. Not only is this spread reasonable, but it is more equitable than the spreads in other cases of which I am aware."

In re: TFT-LCD – Range of .1 to 5.45 for Spread of 1:54.5

In re: Vitamins Antitr. – Range of 2.25 to 26 for a Spread of 1:11.6

ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL: FOUR PROPOSED TIERS

High Tier – More than a Multiplier of Two

- Leaders That Devoted Substantial Efforts to Securing and Defending the Settlement

Mid Tier - Over Lodestar, But a Multiplier Less than Two

- Notable Contributions to the MDL
- Typically with Leadership Appointment

Straight Lodestar

Negative Multiplier

AVAILABLE FUNDS (as of May 10, 2018)

Original QSF Balance: **\$112,500,000.00**

- | | |
|-----------------------------|------------------|
| • Interest Earned: | \$1,261,652.94 |
| • Fees and Taxes: | (\$495,933.14) |
| • Court Approved Expenses: | (\$5,682,779.38) |
| • Incentive Awards: | (\$300,000.00) |
| • Dennis Suplee (to April): | (\$208,290.50) |
| • Available Balance: | \$107,074,649.92 |

Escrow Funds: **\$1,368,050.20**

Total Available Funds: \$108,442,700.12

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:18-md-02323-AB

Kevin Turner and Shawn Wooden, on behalf of
themselves and others similarly situated,

No. 2:12-md-02323-AB

MDL No. 2323

Plaintiffs,

V.

National Football League and NFL Properties
LLC, successor-in-interest to NFL Properties,
Inc.,

Hon. Anita B. Brody

Defendants.

Civ. Action No. 14-00029-AB

THIS DOCUMENT RELATES TO:
ALL ACTIONS

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2018, upon consideration of Co-Lead Class Counsel Anapol Weiss’s Motion for Leave to File Supplemental Memorandum Regarding the Allocation of Common Benefit Fees, and any responses thereto, it is hereby Ordered that the Motion is granted. It is **ORDERED** that Anapol Weiss may file its Supplemental Memorandum Regarding the Allocation of Common Benefit Fees within _____ days of this Order.

Anita B. Brody, J.
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:18-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf of
themselves and others similarly situated,

No. 2:12-md-02323-AB

MDL No. 2323

Plaintiffs,

Hon. Anita B. Brody

V.

National Football League and NFL Properties
LLC, successor-in-interest to NFL Properties,
Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Civ. Action No. 14-00029-AB

**CO-LEAD COUNSEL ANAPOL WEISS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM REGARDING THE ALLOCATION OF
COMMON BENEFIT FEES**

Co-Lead Class Counsel, Anapol Weiss moves this Court for leave to file the attached Supplemental Memorandum Regarding the Allocation of Common Benefit Fees (Ex. A). Good cause exists for leave in that the attached Supplemental Memorandum seeks to address certain issues concerning the allocation of fees which were addressed in this Court's April 5, 2018 Memorandum Opinion.

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Date: May 17, 2018

By: /s/ Gaetan J. Alfano

GAETAN J. ALFANO, ESQUIRE
1818 Market Street - Suite 3402
Philadelphia, PA 19103

Attorney for Anapol Weiss

CERTIFICATE OF SERVICE

Co-Lead Class Counsel Anapol Weiss has served the foregoing Motion on all parties via this Court's Electronic Case Filing System.

Dated: May 17, 2018

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO, ESQUIRE
I.D. No. 32971
1818 Market Street
Suite 3402
Philadelphia, PA 19103
(215) 320-6200

Attorney for Anapol Weiss

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:18-md-02323-AB MDL No. 2323
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 Hon. Anita B. Brody
THIS DOCUMENT RELATES TO: ALL ACTIONS	Civ. Action No. 14-00029-AB

**CO-LEAD COUNSEL ANAPOL WEISS' SUPPLEMENTAL MEMORANDUM
REGARDING THE ALLOCATION OF COMMON BENEFIT FEES**

Co-Lead Class Counsel Anapol Weiss, submits this brief Supplemental Memorandum pointing out data variances that materially affect allocating common benefit fees using lodestars and multipliers. The Court, in its April 5, 2018 Opinion, Dkt. 9860, performed a cross-check which justified awarding the entire available fund. The Court utilized a uniform hourly rate for attorneys and other professionals across all the firms as well as a universal 2.96 multiplier. In doing so, the Court took issue with the moving party's failure to apply consensus rates for all partners, associates, and paralegals. *Fee Op.*, Dkt. 9860, p. 15 (noting correctly that in the leadership formation documents, counsel had previously "reached a consensus to establish reasonable uniform hourly rates for all partners, associates, and paralegals conducting work that benefits all plaintiffs for the purpose of reimbursement for fees from the Common Benefit Fund"). At least, in this respect, the calculation was unreasonable. *Id.* ("Though the hours

submitted are reasonable, the billing rates are not. It is not reasonable that the partner rates submitted by some firms are more than twice the rates submitted by other firms.”). Using different rates affects lodestar calculations. Anapol Weiss’s (“Anapol”) senior partner hourly rates were set at \$650.00, which is at the lower end of the spectrum of the submitted hourly rates. In fact, the Anapol rate, \$650.00 an hour, is only slightly higher than the \$623.05 blended rates of all partners, associates, and paralegals used for cross-check purposes. *Id.* at 16. Applying that blended rate to all of Anapol’s 4,241.20 professional hours, increases the firm’s lodestar to \$2,642,479.60. Applying \$925.00 for senior partner time, with similar adjustments for less senior professional work, increases the lodestar to \$2,585,738.00 from the \$1,857,436.00 presented in the petition.

The second variable is the multiplier. Applying the Court’s blended multiplier of 2.96 to a blended rate lodestar of \$2,642,479.00 yields an allocation of \$7,821,737.84. Many of the lawyers presenting argument on May 15, 2018 lauded Anapol’s work and role in forging this historic settlement. For this reason, the firm’s multiplier ought to be closer to the multiplier of Seeger Weiss. Using the same multiplier yields an award of slightly more than \$10,000,000. Given these objective variations, Anapol respectfully suggests the methodology in its Proposed Alternative Methodology for the Allocation of Common Benefits fees, filed on October 27, 2017, (Dkt. 8701), is proper in this case, where there is a sharp division between: 1) counsel who both performed common benefit work and represented individual clients who stepped up and filed cases against the NFL; and 2) those counsel who either represented few individual clients or none at all.

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Date: May 17, 2018

By: /s/ Gaetan J. Alfano

GAETAN J. ALFANO, ESQUIRE

I.D. No. 32971

1818 Market Street

Suite 3402

Philadelphia, PA 19103

(215) 320-6200

Attorney for Anapol Weiss

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

NOTICE AND ORDER

On Wednesday, May 30, 2018 at 11:00 a.m., the Court is holding a hearing regarding the NFL Parties Motion for the Appointment of a Special Investigator (ECF No. 9880). The participants and timing will be as follows:

- The NFL Parties will have 30 minutes to present and can reserve time for rebuttal;
- Co-Lead Class Counsel Seeger Weiss will have 10 minutes to present;
- Class Counsel The Locks Firm will have 10 minutes to present;
- Class Counsel Podhurst Orseck will have 10 minutes to present; and
- The Special Masters and Claims Administrator will be given time to present as needed.

The Locks Firm and Podhurst Orseck both filed Motions to File Surreplies regarding this issue (ECF Nos. 9983, 9986 & 9987). Because both firms will have an opportunity to be heard at the hearing, it is **ORDERED** that those motions are **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 21ST day of May, 2018, it is **ORDERED** that Co-Lead Class Counsel Anapol Weiss' Motion for Leave to File Supplemental Memorandum Regarding the Allocation of Common Benefit Fees (ECF No. 10001) is **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

TOBIAS BARRINGTON WOLFF
ATTORNEY AND PROFESSOR OF LAW

PENN LAW SCHOOL
3501 SANSOM STREET
PHILADELPHIA, PA 19104
215-898-7471
TWOLFF@LAW.UPENN.EDU

May 22, 2018

The Honorable Anita Brody
7613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1744

In re: National Football League Players' Concussion Injury Litigation
No. 2:12-md-02323-AB; MDL No.2323; Civ. Action No. 14-00029-AB

Dear Judge Brody:

Thank you again for permitting me to address the Court on behalf of the Locks Law Firm at the May 15 hearing on common benefit fees. I write to follow up on two points.

First, I want to avoid any confusion that might arise from the remarks that Mr. Seeger made in his response to me, which he began by saying: "Spoken like a law professor who has not been involved in this case and has no idea what actually happened" or words to that effect. As I believe Mr. Seeger is aware, my involvement in this litigation began at around the same time that his did. In 2012, I was one of two class action experts brought in to discuss the potential Rule 23 obstacles in the case at a gathering of the firms that now serve as class counsel and PSC / PEC members in the offices of Co-Lead Counsel Anapol Weiss. The other expert at that meeting was Professor William Rubenstein, whom this Court appointed last year to write an opinion on attorney fees. I have been providing input to the Locks Law Firm at every stage of the case since that 2012 meeting and, as Mr. Locks indicated when he introduced me at the hearing, I have served as counsel to the firm on submissions to this Court relating to attorney fees for about a year and a half now.

Second, the Court will recall that I spent part of my time at the hearing discussing the best process to employ in resolving disagreements over the fee allocation going forward. Picking up on three principles introduced by Mr. Seeger in his opening remarks, I pointed to the importance of the "transparency" that Mr. Seeger emphasized, agreed with Mr. Seeger that Judge Bartle's work in the *Diet Drugs* litigation "laid the foundation" and serves as a model for this Court, and confirmed his observation that we work "under a microscope" and should employ a process for fee allocation that matches the innovative features of the settlement that this Court has superintended. Those principles suggest that the Court should use Judge Bartle's work as a foundation once again by setting some guiding principles to standardize lodestar rates and ensure equity in the multiplier structure among class

TOBIAS BARRINGTON WOLFF
ATTORNEY AND PROFESSOR OF LAW

PSC/PEC members and specifying how time by firm attorneys, firm paralegals, and contract attorneys will be accounted for in the lodestar.

There is every reason to believe that a fee allocation committee can achieve consensus on most disputed questions among most of the firms submitting common benefit time. Co-Lead Counsel Sol Weiss, Class Counsel Gene Locks, and Sub-Class Counsel Dianne Nast and Arnold Levin were all participants in *Diet Drugs* and joined in the consensus fee allocation in that case. The remaining areas of disagreement in the present case are substantial and require focused attention, but they are certainly no more contentious than was the case in *Diet Drugs*, which involved a larger number of firms making claims against a larger common benefit award that was being issued from two separate attorney-fee funds.

The benefits of adapting Judge Bartle's fee allocation procedure to this case are clear. While a fee allocation committee is unlikely to eliminate all objections and subsequent appeals, it will significantly reduce those inefficiencies and minimize the burden on this Court. Equally important, a consensus fee allocation will foster greater confidence among the population of former players and their spouses who make up the community of interest in this proceeding. That perception of legitimacy is particularly important in this case, where the level of engagement among class members is high. As Mr. Seeger said in his opening remarks last week, this case is under a microscope. The non-transparent, unilateral process by which Mr. Seeger arrived at his proposed fee allocation will not stand up well under that scrutiny, but there is still time to build on the preliminary work that Mr. Seeger has done and achieve a consensus resolution using the precedent set by Judge Bartle as a guide.

The profession, the academy, and the judiciary will all look to the work of this Court as a model in future mass personal injury cases. The procedures for allocating common-benefit fees should manifest the same care that the Court has already displayed in guiding and structuring this innovative settlement. A consensus-based approach that resolves substantially all fee disputes will reflect positively on the Court, strengthen trust and confidence among former players and their families, and reduce the likelihood of time-consuming and disruptive appeals.

Respectfully submitted,



Tobias Barrington Wolff
On behalf of the Locks Law Firm

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2018, I caused the foregoing Letter Brief to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for CM/ECF in the above-captioned matter.

/s/ Tobias Barrington Wolff
Tobias Barrington Wolff, Esquire

SEEGERWEISS LLP

May 23, 2018

By ECF

Honorable Anita B. Brody
United States District Judge
Eastern District of Pennsylvania
James A. Byrnes United States Courthouse
601 Market Street
Philadelphia, PA 19106

Re: **In re National Football League Players' Concussion Injury Litigation**
No. 2:12-md-02323-AB

Dear Judge Brody:

I respectfully submit this brief response to the letter-brief filed late yesterday by Prof. Tobias Barrington Wolff on behalf of The Locks Law Firm (ECF No. 10016). The Court should reject this submission on both procedural and substantive grounds.

First, the Court neither solicited nor authorized post-hearing submissions. As such, this letter-brief was improper. Indeed, earlier this week, the Court denied the motion of the Anapol Weiss firm for leave to file a post-hearing supplemental memorandum. ECF No. 10007 (May 21, 2018.) There is no reason to deny that motion (which at least sought the Court's permission to file a further memorandum) yet allow this unauthorized letter-brief by the Locks Law Firm, which has been presumptuously presented as a *fait accompli*.

Second, Prof. Wolff's points are not well taken. He urges the Court to appoint a fee allocation committee, pointing to the *Diet Drugs* litigation as precedent. That comparison is inapt because, in *Diet Drugs*, the bulk of the common benefit work was not performed by one firm, as was the case here. Moreover, as a general matter, Prof Wolff's criticism that there has been a "non-transparent, unilateral process" here (ECF No. 10016, at 3) is devoid of merit. In legions of cases – which we have cited in several earlier filings,¹ and which Prof. Wolff ignores – courts have tasked lead class counsel alone with either making an allocation recommendation or handling the allocation of common benefit fees outright.

¹ See ECF No. 7151-1, at 69-70 (Feb. 13, 2017); ECF No. 7606, at 19-20 (May 5, 2017); ECF No. 8914, at 9-10 & n.8 (Nov. 9, 2017); ECF No. 8934, at 9-11 (¶¶ 16-17) (Nov. 11, 2017).

Indeed, in the *Volkswagen “Clean Diesel” Litigation* – perhaps the largest consumer class action in U.S. history and whose settlement I was intimately involved in negotiating – the district court delegated the allocation of fees entirely to lead class counsel, and did not require so-called “transparency.” See *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *4 (N.D. Cal. July 21, 2017) (granting \$121 million in fees and \$4 million in costs in connection with 3.0 liter engine consumer and reseller settlement, “to be allocated by Plaintiffs’ Lead Counsel among the PSC firms and additional counsel performing common-benefit work”); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 1047834, at *6 (N.D. Cal. Mar. 17, 2017) (earlier awarding \$167 million in fees and \$8 million in costs in connection with 2.0 liter engine settlement).²

Finally, the suggested appointment of a fee committee is really nothing new – let alone good cause that justifies this unsolicited post-hearing filing. Mr. Locks himself urged a committee or consensus approach in response to my allocation recommendations, arguing that it should supplant those recommendations. See ECF No. 8709, at 2 (¶ 2.B) (Oct. 27, 2017) (“[T]he Court should order the leadership (all class counsel and possibly the entire Plaintiffs Steering Committee) to shoulder the difficult work of coming up with an allocation that properly recognizes contributions, applies reasonable criteria for doing so, arrives at lodestar figures for each applicant, and applies multipliers that are reasonable (though possibly subject to dispute).”). Appointment of a committee was also suggested by at least one other objector. See ECF No. 8725, at 7 n.10 (Oct. 27, 2017) (allocation counter-declaration of Lance H. Lubel). Thus, there is no reason for The Locks Law Firm to be arguing this again at this late date through additional counsel that has suddenly entered an appearance on its behalf.

Respectfully,

s/ Christopher A. Seeger
Christopher A. Seeger
Co-Lead Class Counsel

cc: All counsel of record (via ECF)

² Nor has there been anything “non-transparent” here. In the opening and reply declarations in support of my allocation recommendations, I fully explained the factors that weighed in my analysis and the relative contributions (or lack thereof) of every lawyer or firm seeking an award of common benefit attorneys’ fees, and I addressed in detail the criticisms of my recommendations to the Court. See ECF No. 8447, at 6-13 (¶¶ 14-16) (Oct. 10, 2017); ECF No. 8934, at 3-45 (¶¶ 3-110) (Nov. 17, 2017).

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: May 23, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,
Plaintiffs,

Hon. Anita B. Brody

v.

National Football League and NFL
Properties, LLC, successor-in-interest to NFL
Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

EXPLANATION AND ORDER

On April 5, 2018, I issued a Memorandum Opinion awarding Class Counsel \$106,817,220.62 in attorneys' fees. Today I address the allocation of those funds among Class Counsel for their work in securing the Settlement Agreement.

I. Background

This case began as an aggregation of lawsuits brought by former Players against the NFL Parties for head injuries sustained while playing NFL football. This Settlement was secured without formal discovery, with limited litigation of motions, and with no bellwether trials. Instead this case was litigated through negotiations that were supported by a creative legal framework that survived rigorous appellate challenge.

On January 31, 2012, the MDL was formed and proceedings were centralized in this Court. In July of 2013, I ordered the parties to engage in mediation and I appointed retired

- Revise the funding limitations to the BAP to ensure that all eligible players would receive a BAP baseline assessment;
- Revise the date for the Qualifying Diagnosis of Death with CTE;
- Add a hardship exemption for fee to appeal an award determination; and
- Allow a reasonable accommodation for *force majeure* type events that preclude class members from obtaining medical records.

ECF No. 6479.

On February 13, 2015, the parties agreed to the proposed changes and submitted an amended settlement. On April 22, 2015, I certified the class and approved the Settlement Agreement. ECF No. 6509.

Following my approval, Class Counsel turned their attention to the defense of the class certification under Rule 23 and the approval of the Settlement Agreement. On April 18, 2016, the Third Circuit Court of Appeals affirmed. *In re National Football League Players Concussion Injury Litigation*, 821 F.3d 410 (3d Cir. 2016). The Circuit Court's opinion was challenged through two petitions for writ of certiorari that were submitted to the United States Supreme Court. The petitions were denied on December 12, 2016. The Settlement became effective on January 7, 2017.

As a part of the Settlement Agreement, the NFL Parties agreed to pay \$112.5 million dollars in fees to Class Counsel. On April 5, 2018, I approved Co-Lead Class Counsel's petition for the award of attorney's fees for the full amount. On that same date, I approved the incentive awards for class representatives and awarded the payment of \$5,682,779.38 in expenses to Class Counsel. *In re National Football League Players' Concussion Injury Litigation*, No. 2:12-MD-02323-AB, 2018 WL 1635648 (E.D. Pa. April 5, 2018).

On September 11, 2017, I ordered Co-Lead Class Counsel, Christopher Seeger to submit a proposal for the allocation of lawyers' fees among Class Counsel. ECF No. 8367. Mr. Seeger

submitted a detailed proposal on October 10, 2017. ECF No. 8447. I also invited any party seeking payment of class benefit fees to submit a counter-declaration. ECF No. 8448. On May 15, 2018, I convened a hearing and allowed any party seeking class benefit payment the opportunity to explain their position and basis for the fee requests.¹

In the April 5th Fee Opinion, I observed that a portion of the \$112.5 million would be used to pay Class Counsel's fees for securing the Settlement Agreement and would be used for the implementation of the Settlement Agreement. Today I allocate \$85,619,466.79 to Class Counsel for their work in securing the Settlement Agreement. I continue to hold the remaining funds in reserve to pay Class Counsel for their services in supporting the class through the implementation of the 65-year term of this Agreement.²

II. Discussion

This Settlement was obtained through a complex, multi-tracked mediation effort. It required a pioneering effort by Class Counsel, which allowed for the formation of a legally adequate class despite player differences. The relatively quick resolution allowed impaired Class Members to receive compensation and access to treatment as quickly as possible. The Parties made it clear to me that certification of this case as a class action was a keystone to negotiations. But, Rule 23 and the related case law made class certification in personal injury cases a challenge. Class Counsel's creativity in structuring a certifiable class against this legal landscape

¹ In advance of this hearing, I required all firms seeking payment for class benefit services to provide declarations related to the illegal assignment of Class Member Awards to Third-Party Funders. I have decided not to take action on that information at this time.

² The Settlement Agreement allowed for a reduction of individual Awards by up to 5% to pay implementation fees to Class Counsel. In my April 5, 2018 opinion, I indicated that I believed a determination of the need for additional funds was premature at this time. In an abundance of caution, I have instructed the Claims Administrator to hold 5% of all Awards in reserve. I will revisit Class Counsel's request for additional funds to be paid from that holdback at a later date.

and persuading this Court, the Third Circuit, and United States Supreme Court was groundbreaking.

Factors Considered in Calculation of the Multipliers

In his proposed allocation, Co-Lead Class Counsel indicated that he used three broad criteria in calculating his proposed allocation: (1) appointed leadership roles in the litigation; (2) “meaningful” involvement in the litigation from beginning to end; and (3) value of the contribution to the settlement negotiations and defense of the Settlement on appeal.

I will address Co-Lead Class Counsel’s third factor first, because I believe it most important. Under present case law, establishing class certification under Rule 23 in mass tort cases is challenging. One of Class Counsel’s most important contributions was the creation and negotiation of the necessary provisions that allowed for a settlement under these legal rigors. Class Counsel’s innovative terms formed through rigorous negotiation and then defended at the appellate level were outstanding. I place a very high value on the legal acumen necessary to construct and defend this unique settlement.

Secondly, credit should be given to attorneys who were meaningfully involved in this litigation from the earliest stages through to the hard fought appeal. The lawyers that advanced the interests of the class for the full five years of negotiation and defense deserve to be compensated for this work.

Relatedly, several objectors have requested that I consider the common benefit work performed prior to the formation of the MDL. At the start of the MDL proceedings, I adopted the protocol proposed by Plaintiffs’ leadership as it related to the submission of fees and expenses. Those regulations prohibited the submission of hours for work performed prior to the

formation of this MDL. ECF No. 3710. As is noted below, I have considered work done prior to the formation of the MDL through an increase in the firm's multiplier where applicable.

Finally, the fact that a firm has a leadership role in this MDL/Class Action is a factor that should be considered in the fee allocation. But, membership in the Plaintiff's Executive Committee (the "PEC") and the Plaintiff's Steering Committee (the "PSC"), standing alone, is insufficient to merit anything greater than a 1.0 "multiplier." In constructing the PSC and PEC, Plaintiffs provided a list of the tasks that were delegated to the PSC, almost all of which were never necessary to the advancement of this case. ECF No. 54, at 2-4. Thus, members of the PEC and PSC are entitled to payment for the work performed at reasonable billing rates, but, without more, are not entitled to an enhancement of those fees.

Some attorneys have argued that they incurred more risk by taking on large numbers of clients. They argue that their contribution of "critical mass" is a factor worthy of a multiplier. I disagree. Every attorney involved in this litigation has taken on the risk that work will be performed, but no payment will be received. Attorneys who worked a high number of hours advancing the interests of large numbers of clients certainly incurred great risk, but risk incurred for individuals must be paid by those individuals.³ On the other hand, attorneys who worked a high volume of hours advancing the interest of the Class incurred a high risk for the Class. That is the type of risk that should be paid through a class benefit multiplier.

³ Actually, as Professor Rubenstein noted, the economies of scale actually benefit firms that took on large volumes of clients. ECF No. 9526 at 32-33. Though these attorneys have taken on a greater volume of risk, they have actually taken on less risk on a client by client basis. Either way, this is risk attributable to their representation of individual clients, not their risk as it relates to the Class.

Billing Rates Used

As to the lodestars submitted here, I have previously expressed my concerns about the billing rates submitted by some firms. *See In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1635648, *9. In seeking the appointment of the PEC and PSC, the attorneys indicated that they had “reached consensus to establish reasonable uniform hourly rates for all partners, associates and paralegals conducting work that benefits all plaintiffs for purposes of reimbursement for fees from the Common Benefit Fund and for lodestar check....” ECF No. 54. Despite this, the hourly rates submitted here were not uniform and these agreed rates have not been provided to the Court. The lodestars submitted break the hours worked into groups of partners, of counsel, associates, staff attorneys and contract attorneys, and paralegals. I have taken the average billing rate⁴ for each of these categories to use as a reference. Where the overall firm rate has exceeded the rate using these averages, I have adjusted the billing rates. Where an adjustment is made, it is noted below.

The Process to Determine this Allocation

I concluded that this specific case would be most equitably resolved by allowing Co-Lead Class Counsel to recommend an allocation. I chose this approach because this case was resolved through intensive negotiations, as opposed to widely reviewed discovery, depositions, and bellwether trials. Co-Lead Class Counsel had a front row seat for the negotiations and the legal rigors of the appellate process. His perspective is unique and important. This approach is not unusual and has been endorsed by other courts, including courts in this district. *See, e.g., Milliron v. T-Mobile, USA, Inc.*, 423 F. App'x 131, 134 (3d Cir. 2011); *In re Processed Egg*

⁴ The average billing rate for partners is \$758.35. The average billing rate for “of counsel” attorneys is \$692.50. The average billing rate for associates is \$486.67. The average billing rate for contract attorneys is \$537.50. The average billing rate for paralegals is \$260.00.

Prods. Antitrust Litig., No. 08-2002, 2012 WL 5467530, at *7 (E.D. Pa. Nov. 9, 2012); *accord In re Linerboard Antitrust Litig.*, 333 F. Supp. 2d 343, 351-52 (E.D. Pa. 2004).

Since it is my obligation to “evaluate what Class Counsel actually did and how it benefitted the class,” *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998), I asked Class Counsel to submit his recommendation and then allowed other attorneys to object to the proposed allocation, both in pleadings and in open court. The path of this litigation has also provided me with a very full picture of the roles and responsibilities of the different attorneys in this litigation. As a result, I believed that delegating the allocation to a special master or Magistrate Judge for a report was not advantageous.

The Firm-by-firm Fee Requests

I will address each firm in Co-Lead Class Counsel’s fee petition in alphabetical order, setting out the amount of the allocation and the factual basis underlying my conclusion. I will then address the fee petitions of the Objectors.

1. Anapol Weiss.

Anapol Weiss made contributions to this litigation from its outset to its conclusion. I appointed Sol H. Weiss of Anapol Weiss as Co-Lead Class Counsel in this case, having been selected for that role by the PEC. ECF No. 72. Larry E. Coben was appointed to serve as a member of the PEC.

Anapol Weiss was actively involved in the construction and negotiation of the Settlement Agreement. As was reported by Co-Lead Class Counsel, Mr. Weiss “attended many of the settlement meetings and mediations with the NFL. Mr. Weiss, and his partner, Mr. Coben, assisted in negotiating the battery of tests for the BAP and dealt with other matters relating to the medical issues underpinning the Settlement. Mr. Weiss was active in the settlement process,

including review and comment on the drafts of the Settlement Agreement. Messrs. Weiss and Coben met with and assisted in preparing scientists and physicians who submitted declarations in support of the Settlement.” ECF No. 8447, at 7.

Anapol Weiss was one of the firms involved in this litigation from start to finish. They were also responsible for filing the first federal case (*Easterling v. NFL*, Civil Action No. 11-5209) on August 17, 2011. Prior to the formation of the MDL, Anapol Weiss played a leadership role in bringing plaintiffs’ counsel together. I have given some weight to this pre-MDL work in the calculation of their multiplier.

Anapol Weiss submitted 4,241.20 hours for a lodestar of \$1,857,436.00. Based on the contributions and the nature of the work performed by Anapol Weiss, including the firm’s pre-MDL work, I award them \$4,643,590.00, which amounts a 2.5 multiplier on the firm’s lodestar.

2. Casey Gerry Schenk.

David Casey was appointed to serve on the PSC. Mr. Casey and his partner, Fred Schenk also served on the Communications Committee. Co-Lead Class Counsel has recommended that work performed as a member of the Communications Committee is not enough, standing alone, to merit an enhancement through a multiplier. As discussed above, Co-Lead Class Counsel supervised all aspects of this settlement negotiation. I respect his unique position in evaluating the impact of the committee’s work on the over-all settlement, and I accept his conclusion about the proper multiplier to be used.

Casey Gerry Schenk submitted 417.40 hours for a lodestar of \$333,920.00. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$316,533.51, which is the full amount of the adjusted lodestar.

3. Dugan Law Firm.

James Dugan was selected to serve on the PSC and served on the Discovery and Preemption Committees.

The Dugan Law Firm submitted 293.90 hours for a lodestar of \$188,340.50. I award the full amount of the firm's lodestar.

4. Girard Gibbs.

Daniel Girard and Amanda Steiner worked with Co-Lead Class Counsel, experts, and co-counsel to obtain Final Approval of the Settlement and assisted in the defense of the Settlement Agreement after Final Approval. I accept Co-Lead Class Counsel's characterization of the firm's contribution to the defense of the settlement, which I believe is one of the most complex aspects of the work done in this case.

Girard Gibbs submitted 373.10 hours for a lodestar of \$279,489.00. I will award the firm \$335,386.80, which amounts a 1.2 multiplier on the firm's lodestar.

5. Girardi Keese.

I appointed Thomas V. Girardi and Graham LippSmith of Girardi Keese to serve as members of the PEC. Additionally, Girardi Keese, along with Goldberg Persky & White and Russomanno & Borello, brought the first two cases that were filed in this litigation: *Maxwell v. NFL* (filed July 19, 2011) and *Pear v. NFL* (filed August 3, 2011).

The firm has submitted their pre-MDL hours as an exhibit to their objections. I have considered that submission and considered the work done by the firm prior to the formation of the MDL. This pre-MDL work has provided the basis for the multiplier that I have chosen.

This firm submitted 628.70 hours for a lodestar of \$448,190.00. This lodestar utilized rates that exceeded the average rates I have identified. In consideration of the firm's leadership

Hagen, Rosskopf & Earle submitted 540.80 hours for a lodestar of \$324,480.00, which I award them in full.

8. Hausfeld.

I appointed Richard Lewis and Michael D. Hausfeld to serve as members of the PEC. Additionally, Hausfeld associate, Jeannine M. Kenney, served as the Court-appointed Plaintiffs' Liaison Counsel, and assisted Co-Lead Class Counsel in organizing communications with and between the PEC, the PSC and Co-Lead Class Counsel.

Mr. Lewis also served on the Legal Committee where he conducted factual and legal research in preparation for, and drafting of, the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints, and opposing the NFL Parties' efforts to dismiss Plaintiffs' claims.

Hausfeld submitted 1,281.80 hours for a lodestar of \$763,917.50. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$914,903.77, which amounts a 1.3 multiplier on the adjusted lodestar.

9. Herman, Herman & Katz.

At the direction of Co-Lead Class Counsel, Herman Herman & Katz provided research and preparation of materials applicable to the cause and treatment of concussions that assisted in the development of the terms and conditions of the Settlement. The firm was uniquely positioned to assist through the aid of Joseph Kott, who brought the experience of over 20 years of practicing neurosurgery prior to becoming of counsel.

Herman Herman & Katz submitted 136.30 hours for a lodestar of \$89,660.00. I award the full amount of the firm's lodestar.

10. Professor Samuel Issacharoff.

One of the keystones to this litigation was overcoming the challenge presented by Rule 23 in the personal injury context. In hindsight, it is clear that this was not an insurmountable obstacle. The creative construction of the Settlement Agreement as well as an intelligent approach to the case law made the defense of this Settlement look almost easy. But, that hindsight cannot control our evaluation. The Settlement in this case was a pioneering effort, not just on the science, but also on the law.

Professor Issacharoff's persuasive appellate advocacy and knowledge of class action jurisprudence was invaluable to the Class. Though Professor Issacharoff's presence is most obviously seen in his appellate pleadings and argument, that contribution was only part of his work. As Co-Lead Class Counsel explains, Professor Issacharoff was influential in the settlement negotiations, which were conducted with an eye toward the potential Rule 23 issues. ECF No. 8447, at 9.

Several objectors take issue with the multiplier proposed by Co-Lead Class Counsel. These arguments arise out of a fundamental misunderstanding of the nature of the agreement that was reached in this case. Settlement required the creation of a class. The complexity of the law in this area required an expert who could help construct an agreement that would withstand the rigors of the appellate process. If that process looked easy, it was due to Professor Issacharoff's skill.

Professor Issacharoff submitted 801.75 hours for a lodestar of \$800,512.50. As a member of the "team," however, the professor was obligated to comply with the same restrictions on billing rates as law firms seeking common benefit payments. I have, therefore,

adjusted the billing rates used to comply with the average rate I used for billing by law firm partners. I award \$1,976,012.00, which amounts a 3.25 multiplier on the adjusted lodestar.

11. Kreindler & Kreindler.

Anthony Tarricone co-chaired the Communications Committee of the PSC, which was an active committee during the negotiations and in the public defense of the Settlement. As Co-Lead Class Counsel explained, “Mr. Tarricone helped develop an effective media campaign to ensure the dissemination of accurate information to interested media, and counter misinformation concerning the Settlement to potential class members.” ECF No. 8447, at 9.

The objections submitted by Mr. Tarricone, along with the objections submitted by the other members of the Communications Committee, have provided me with a full picture of the work performed by the committee. Co-Lead Class Counsel has also presented me with detailed information on his views related to the impact of the Communications Committee on the overall litigation. Mr. Tarricone was co-chair of the committee and for that leadership I believe that he is entitled to a multiplier. Other than the firms that I appointed as Class Counsel and Professor Issacharoff, no firm will be paid more than the Kreindler firm. It is entirely clear to me that this payment is well-earned. It is equally clear to me that a higher multiplier is not appropriate.

Kreindler & Kreindler submitted 1,573.00 hours for a lodestar of \$1,258,400.00. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$1,491,097.30, which amounts to a 1.25 multiplier on the adjusted lodestar.

12. Levin Sedran & Berman.

Levin Sedran & Berman provided meaningful support of this litigation from start to finish. Arnold Levin was selected to serve as a member of the PSC, and was later appointed Subclass Counsel for Subclass 1. Mr. Levin was an active participant in the negotiations that led

to the Settlement Agreement. Co-Lead Class Counsel credits Mr. Levin with his role in the negotiations regarding “class and subclass definitions, a preliminary injury grid, and foundation for the Baseline Assessment Program.” ECF No. 8447, at 9. Additionally, Mr. Levin and Sandra L. Duggan assisted with negotiations related to players in Subclass 2 with Dianne Nast, Subclass Counsel for Subclass 2.

At the direction of Co-Lead Class Counsel, the firm assisted with research on a number of topics relevant to the strength and viability of Plaintiffs’ claims, including medical monitoring, tolling, preemption, and fraudulent concealment, while assisting in the preparation of the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints. The firm continued its support of the Settlement through Rule 23 appeals and arguments to the Third Circuit.

This firm submitted 4,862.75 hours for a lodestar of \$4,573,438.75. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$8,411,720.45, which amounts a 2.25 multiplier on the adjusted lodestar.

13. Locks Law Firm.

The Locks Law Firm was involved in the leadership of this litigation. I appointed Gene Locks and David Langfitt to serve as members of the PEC. Later in the litigation I appointed Mr. Locks to serve as Class Counsel. Mr. Langfitt worked with two other PEC members to draft the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints, and was involved in preparing the opposition to the NFL’s motion to dismiss on the grounds of preemption.

Though present early in this litigation, the firm’s role did not continue throughout the appellate support of the Settlement. I accept Co-Lead Class Counsel’s assessment that the firm

did not play an active role in either the settlement negotiations or the defense of the Settlement on appeal. I also have to respect Co-Lead Class Counsel's concerns about the impact of Mr. Locks' interview with *Businessweek*, since Co-Lead Class Counsel led the negotiations with the NFL and is best positioned to advise me on this matter.

Ultimately, I conclude that the Locks firm is entitled to a multiplier for the leadership role they played in this litigation, but their failure to provide meaningful support for other crucial aspects of this process is the basis for the multiplier that I have chosen. The firm, however, will be compensated more than \$3.8 million for their services – only four other firms will receive a higher payment from the common benefit fund.

The Locks Law Firm submitted 4,243.00 hours for a lodestar of \$3,084,500.00. I award the firm \$3,855,625.00, which amounts a 1.25 multiplier on the firm's lodestar.

14. McCorvey Law.

Derriel McCorvey was selected to serve on the PSC. Mr. McCorvey also served on the Communications Committee. The firm, like many others, stood ready to perform additional work, but none was assigned because of the nature of this Settlement. I have no doubt that McCorvey Law could have provided additional positive support had this litigation taken a different path. Ultimately, however, I must assess the work actually performed.

McCorvey Law submitted 331.30 hours for a lodestar of \$198,780.00. I award the full amount of the firm's lodestar.

15. Mitnick Law.

Mitnick Law was not a member of the PEC or PSC, but served at the direction of Co-Lead Class Counsel in the multi-faceted outreach efforts to the Retired NFL Player Community, including in person events with alumni and other NFL players' associations.

Mitnick Law submitted 1,198.15 hours for a lodestar of \$898,612.50. Co-Lead Class Counsel proposed multiplier of .75 for Mitnick Law's allocation in this matter. Though Mr. Mitnick initially submitted objections to the proposed allocation, he subsequently *withdrew* those objections, stating, "After much thought and deliberation, I have realized how much time and energy Mr. Seeger and his firm have put into the NFL concussion litigation, its successful resolution and their recommendation for the allocation of common benefit fees. If not for Mr. Seeger's efforts, there is no doubt that this case would have never materialized as quickly as it did." ECF No. 8917.

Despite withdrawing his objection, Mitnick Law submitted a fee petition on May 11, 2018 and appeared before me on May 15, 2018 to argue for fees beyond those recommended by Co-Lead Class Counsel. The time for submitting fee petitions has long passed. I set a deadline of October 27, 2017 for the submission of all requests for fees. ECF No. 8448. Yet in the interest of fairness, I have reviewed the fee petition and I have considered Mr. Mitnick's "objections" submitted during the May 15, 2018 Hearing. I have also reviewed Co-Lead Class Counsel's explanation of the impact of the work performed by Mitnick Law. I do not find Mr. Mitnick's arguments persuasive.

I award Mitnick Law \$673,959.38, which amounts a .75 multiplier on the adjusted lodestar.

16. NastLaw.

NastLaw provided strong leadership throughout this litigation. Dianne Nast was selected to serve as a member of the PSC, and was later appointed to serve as Subclass Counsel for Subclass 2.

Co-Lead Class Counsel credits NastLaw as one of only six firms that “made contributions from the outset of the litigation all the way to its end.” ECF No. 8447-2 at 4. The firm was actively involved from the outset of the litigation, including preparation for, and drafting of, the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints and opposing the NFL Parties’ efforts to dismiss Plaintiffs’ claims. Ms. Nast participated in settlement negotiations with the NFL Parties as counsel for Subclass 2. The firm also supported efforts in defending the Settlement after Preliminary Approval.

Nast Law submitted 1,211.75 hours for a lodestar of \$765,060.25. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$1,090,636.06, which amounts a 1.5 multiplier on the adjusted lodestar.

17. Podhurst Orseck.

Podhurst Orseck supported the Settlement in all three important phases in the litigation. I appointed Stephen Marks and Ricardo M. Martinez-Cid to serve as members of the PEC. Later in the litigation, I appointed Mr. Marks to serve as Class Counsel. Mr. Marks served as co-chair of two committees, including the Communications Committee, Mr. Martinez-Cid also served as co-chair of two committees, and Stephen Rosenthal serves as one of the co-chairs of the Legal Committee, which drafted the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints and opposition to the NFL Parties’ efforts to dismiss Plaintiffs’ claims. Podhurst was counsel for two individuals who served as Class Representatives in this matter.

Podhurst provided meaningful contributions throughout this litigation. Co-Lead Class Counsel credits Mr. Marks with his important work during settlement negotiations, including in early face-to-face negotiations with the NFL Parties. Also, importantly, Mr. Marks and his firm continued to provide support for the Settlement through Final Approval.

Podhurst Orseck submitted 4,510.80 hours for a lodestar of \$3,005,744.50. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$6,048,169.49, which amounts a 2.25 multiplier on the adjusted lodestar.

18. Pope McGlamry.

Mike McGlamry was selected to serve as a member of the PSC. Mr. Glamry served on the Communications Committee. Several of the firm's shareholders served on a variety of committees and would certainly have provided important services to the Class had this litigation taken a different path to resolution. However, I agree with Co-Lead Class Counsel's conclusion that the firm's ultimate role was not significant enough to merit a multiplier.

Pope McGlamry submitted 1,274.90 hours for a lodestar of \$829,030.00. I award the full amount of the firm's lodestar.

19. Rheinhardt Wendorf & Blanchfield.

Garrett Blanchfield served on two committees. The firm submitted 23.10 hours for a lodestar of \$14,899.50. I award the firm \$11,174.63, which amounts a .75 multiplier on the submitted lodestar.

20. Rose, Klein & Marias

David Rosen was selected to serve on the PSC and served on the Communications Committee, the Workers' Compensation Committee, and the Lien and Ethics Committees. I have already addressed both Co-Lead Class Counsel's explanation and my conclusion about the role of the Communications Committee. As to the additional committees referenced, these groups did not provide the type of support of the Settlement that would entitle counsel to a multiplier.

The firm submitted 243.03 hours for a lodestar of \$157,969.50. I award the full amount of the firm's lodestar.

21. Seeger Weiss

Because of the path taken by this litigation, the role played by Seeger Weiss was more significant than other firms. Following the Initial Organizational Conference, I appointed Chris Seeger to be Co-Lead Class Counsel in this litigation. ECF No. 64. I also appointed Seeger Weiss partner David Buchanan to serve as a member of the PEC.

Mr. Seeger led the negotiations that resulted in this historic settlement. Mr. Seeger and Mr. Buchanan led every session of negotiations with the NFL Parties. And they led every meeting of plaintiffs' counsel who assisted in the development of the Settlement Agreement.

Seeger Weiss played a key role in evaluating the complex legal issues of this case and defending the case on appeal. Upon recognizing the potential legal issues related to negotiating the Settlement under Rule 23, Seeger Weiss brought in the necessary experts to help frame the Settlement and position it effectively for the appeal. After successfully arguing for Preliminary and Final Approval of the Settlement, including the negotiation of amendments to the Settlement Agreement, Seeger Weiss took the lead in defending the Settlement on appeal. The firm worked closely with Professor Issacharoff in defending the class action settlement on appeal, up through denial of *certiorari* review by the United States Supreme Court.

Seeger Weiss has submitted 21,044 hours of fees, more than four times that submitted by other firms.⁵ Some objectors have attempted to argue that Seeger Weiss did not bear much risk in this litigation. The billable hours submitted in this case speak for themselves. Collectively

⁵ Attorneys from six firms were appointed to be class counsel in this litigation. The collective hours of all five remaining firms is less than the hours submitted by Seeger Weiss.

Class Counsel submitted 51,068 hours in lodestar. That is to say that all of the firms that submitted lodestar fees risked that more than fifty-one thousand hours of work would go unpaid. That is a great risk, but it is shared among a large group. Seeger Weiss, individually, risked that more than twenty-one thousand hours of work committed to this litigation would go unpaid. That is almost half of the total risk taken on behalf of the class.

This risk did not dissipate prior to the conclusion of the appeals in this case. Seeger Weiss and Professor Issacharoff constructed a landmark legal theory to defend the settlement of this personal injury case as a class action. This was a great legal challenge that was remarkably well orchestrated both in the design of the Settlement and in the outstanding appellate advocacy that supported it.

Seeger Weiss has submitted 21,044 hours for a lodestar of \$18,124,869.10.⁶ This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$51,737,185.70, which amounts to a 3.5 multiplier on the submitted lodestar.

22. The Brad Sohn Law Firm

Brad Sohn assisted the Ethics Committee on various matters. The Brad Sohn Law Firm submitted 50.00 hours for a lodestar of \$26,250.00. I award them \$19,687.50, which amounts a .75 multiplier on the firm's lodestar.

23. Spector Roseman Kodroff & Willis

William Caldes, of Spector Roseman Kodroff & Willis, served on two committees. The firm submitted 74.40 hours for a lodestar of \$51,708.00. I award them \$38,781.00, which amounts a .75 multiplier on the firm's lodestar.

⁶ After the effective date of the settlement, Seeger Weiss has continued to provide services for the class. As set forth below, these bills will be submitted separately at a later date.

24. Zimmerman Reed

Charles Zimmerman was selected to serve as a member of the PSC and he served on the Ethics Committee.

The firm has argued that it is entitled to credit for pre-MDL work, noting that it had “formulated a case theory and filed [their] first complaints” by December of 2011. But the early submissions in this case were filed months before that – in July and August of 2011. By December of 2011, Plaintiffs’ organizational meetings were already being held and the *Maxwell* and *Pear* cases were actively moving forward. The firm notes its participation in the *Dryer* litigation in 2009, but it is hard to understand how work on that entirely separate litigation should be a common benefit consideration in this litigation. I have considered this contribution in my calculation of fees for the firm.

Zimmerman Reed submitted 1,106.50 hours for a lodestar of \$885,907.25. This lodestar utilized rates that exceeded the average rates I have identified. I award the firm \$811,600.87, which is the full amount of the adjusted lodestar.

25. Faneca Objectors.

The Faneca Objectors have submitted a separate fee petition in this matter (ECF No. 7070), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel. These Objectors claim that the final settlement incorporated four key elements that have roots in their objections:

- Credit for NFL Europe;
- The Uncapping of the BAP Fund;
- Expansion of the death with CTE qualifying diagnosis; and
- Elimination of the appeal fee in cases of hardship.

For these services, the Faneca Objectors seek \$20 million for fees and expenses, which is 16.3% of the \$122.6 million in value the Objectors' claim they secured for the class. While the amount sought by the Faneca Objectors is unreasonable, they are entitled to compensation for the work they performed for the class.

I appointed the firms representing the Faneca Objectors as Court-appointed liaisons to coordinate the arguments of the Objectors at the November 19, 2014 Fairness Hearing. ECF No. 6344. The firms provided a service to the Court by serving in that leadership role.

In consideration of the service provided as liaison counsel and the firms' role in providing benefits to the class, I award \$350,000.00 to the firms that represented the Faneca Objectors.

26. Armstrong Objectors.

The Armstrong Objectors have submitted a separate fee petition in this matter (ECF No. 7232), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel. These Objectors claim that they should be credited with many of the improvements that were also submitted by the Faneca Objectors.

I reject the claims submitted by the Armstrong Objectors. The Armstrong Objectors cannot receive credit for parroting the same objections that were made more persuasively by the Faneca Objectors.

I deny the fee petition submitted by the Armstrong Objectors.

27. Alexander Objectors.

The Alexander Objectors have filed repeated and largely redundant pleadings seeking fees for themselves and objecting to the fee petition submitted by Co-Lead Class Counsel. The firm has argued that they have provided "well over 1,000 hours attempting to improve the terms

of the settlement.” ECF No. 8725, at 9-10. I have reviewed all of the pleadings filed by the Alexander Objectors and conclude that the arguments are too voluminous to restate here. Common benefit attorneys do not receive fees for unsuccessful appeals and unsuccessful objections. For that reason, the fee petition from the Alexander Objectors must be rejected.

28. Jones Objectors.

The Jones Objectors have submitted a separate fee petition in this matter (ECF No. 7364, 7555), as well as objections to the allocation proposal submitted by Co-Lead Class Counsel.

The Jones Objectors argue that they should be given fees for their objection that resulted in credit for seasons played in NFL Europe. As I have already indicated, the Faneca Objectors are entitled to credit for their work in presenting the NFL Europe objection. A comparison between the argument presented by the Faneca Objectors (ECF No. 6201 at 34-36) and the argument presented by the Jones Objectors (ECF No. 6235 at 3) speaks for itself.

I deny the fee petition submitted by the Jones Objectors.

29. Corboy & Demetrio.

Co-Lead Class Counsel has requested an allocation to Corboy & Demetrio for their work in supporting and defending the Settlement. The firm represented objectors to the initial Settlement Agreement, but ultimately worked with Class Counsel in support of the Settlement and defense of it on appeal.

I award the firm \$250,000.00.

Total Payments at the Present time

As is set forth above, I approve the payment of \$85,619,446.79 of the \$112.5 million that I approved for payment of fees for class benefit.

Girard Gibbs.....	\$335,386.80
Girardi Keese	\$526,548.33
Goldberg, Persky & White.....	\$328,575.00
Hagen, Roskopf & Earle	\$324,480.00
Hausfeld	\$914,903.77
Herman Herman & Katz	\$89,660.00
Professor Issacharoff.....	\$1,976,012.00
Kreindler & Kreindler.....	\$1,491,097.30
Levin Sedran & Berman	\$8,411,720.45
Locks Law Firm.....	\$3,855,625.00
McCorvey Law	\$198,780.00
Mitnick Law	\$673,959.38
NastLaw	\$1,090,636.06
Podhurst Orseck	\$6,048,169.49
Pope McGlamry	\$829,030.00
Rheinart Wendorf & Blanchfield.....	\$11,174.63
Rose, Klein & Marias	\$157,969.50
Seeger Weiss.....	\$51,737,185.70
Brad Sohn Law Firm.....	\$19,687.50
Spector Roseman Kodroff & Willis.....	\$38,781.00
Zimmerman Reed.....	\$811,600.87
Faneca Objectors.....	\$350,000.00
Corboy & Demetrio	\$250,000.00

Fund Administrator of the AFQSF to effectuate this Order.

s/Anita B. Brody

ANITA B. BRODY, J.

5/24/2018

COPIES VIA ECF ON 5/24/2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION LITIGATION	§ § § § § § § § § §	
<hr/>		No. 12-md-2323 (AB)
		MDL No. 2323
THIS DOCUMENT RELATES TO: ALL ACTIONS		

**Motion to Stay Enforcement of Attorneys' Fee Allocation Order (ECF
10019) Pending Appeal
And
Request for Expedited Consideration**

The Alexander Objectors and Lubel Voyles, LLP (hereinafter "Movants") and file this motion pursuant to Fed. R. Civ. P. 62, and, for the reasons set forth in the accompanying memorandum, respectfully request the Court stay enforcement of the Court's attorneys' fee allocation order (ECF 10019) pending appeal of that order and the underlying, related orders awarding common benefit fee (ECF 9860/9861); maintaining a 5% holdback from Class Members' recoveries for future fees (ECF 7151); and presumptively limiting the effective IRPA fee recovery to 17% (ECF 9862/9863).

Date: May 25, 2018

Respectfully Submitted,

Mickey Washington
Texas State Bar No.: 24039233

/s/ Lance H. Lubel
Lance H. Lubel
Texas State Bar No.: 12651125

WASHINGTON & ASSOCIATES,
PLLC
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (832) 977-9136
Facsimile: (832) 714-0314
Email: ccanady@canadylawfirm.com

Adam Voyles

Texas State Bar No.: 24003121
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I filed the foregoing through the Court's CM/ECF system, which will provide electronic notice to all counsel of record and constitutes service on all counsel of record.

/s/ Lance H. Lubel
Lance H. Lubel

Dkt. 10023, Order Finding as Moot Motion To Strike Class Counsel's
Sur-Reply regarding: Fee Allocation, filed May 29, 2018A.____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**RESPONSE OF CO-LEAD CLASS COUNSEL TO PETITION OF THE MITNICK LAW
OFFICE FOR AN INDEPENDENT AWARD OF ATTORNEYS' FEES**

Co-Lead Class Counsel respectfully submits this response to the Petition of the Mitnick Law Office for an Independent Award of Attorneys' Fees ("Petition") (ECF No. 9990).

Given that it has now ruled on the allocation of common benefit attorneys' fees, including to Mr. Mitnick's firm (ECF No. 10019), the Court should deny the Petition as moot.¹

¹ It is unclear what Mr. Mitnick meant by an "Independent Award" of attorneys' fees or from what source the "Independent Award" was to be paid. This response is submitted on the assumption that Mr. Mitnick was seeking a fee award out of the available funds in the Attorneys' Fees Qualified Settlement Fund and other available monies for the payment of common benefit attorneys' fees that the undersigned presented at the May 15, 2018 fee allocation hearing. The

Even were it not moot, the Petition was, as the Court noted in its May 24, 2018 Explanation and Order, improper. *See* ECF No. 10019, at 17. Mr. Mitnick had been afforded an opportunity to respond to the undersigned's October 10, 2017 proposed allocation of common benefit fees (ECF No. 8447). He availed himself of that opportunity (ECF No. 8653), only to withdraw his counter-declaration shortly thereafter (ECF No. 8917; *see also* ECF No. 8934, at 2 n.1 (noting withdrawal)). At the time of the Petition's May 14, 2018 filing (the very eve of the allocation hearing), the time had long passed for the filing of common benefit fee petitions and objections to the undersigned's recommended fee allocations. The eleventh-hour filing of the Petition flouted the timetables that the Court established for the orderly briefing of common benefit fee issues.

At any rate, Mr. Mitnick had an opportunity to speak at the May 15 hearing, and he presented his argument that his work deserved more recognition than was reflected in Co-Lead Class Counsel's recommendation. In making his recommendation, the undersigned considered all of the points that Mr. Mitnick raised in his Petition – which were the same points he had made in his now-withdrawn counter-declaration – and the undersigned addressed Mr. Mitnick's arguments at the May 15 hearing. But far more importantly, notwithstanding that the Petition was filed at 11:00 p.m. the night before May 15 hearing, the Court, in the interest of fairness, considered Mr. Mitnick's arguments. It simply did not find them persuasive. ECF No. 10019, at 17.

Date: May 29, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
 SEEGER WEISS LLP
 55 Challenger Road, 6th Floor
 Ridgefield Park, NJ 07660
 cseeger@seegerweiss.com
 Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

undersigned is unaware of any other source of payment for such attorneys' fees. The undersigned assumes that Mr. Mitnick was not petitioning the Court for an award of fees directly from the NFL.

CERTIFICATE OF SERVICE

I, Christopher A. Seeger, hereby certify that a true and correct copy of the foregoing response was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: May 29, 2018

Respectfully submitted,

/s/ Christopher A. Seeger
Christopher A. Seeger

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**OPPOSITION OF CO-LEAD CLASS COUNSEL TO MOTION TO STAY
ENFORCEMENT OF ATTORNEYS' FEE ALLOCATION ORDER PENDING APPEAL**

I. INTRODUCTION

The Alexander Objectors and the law firm of Lubel Voyles, LLP (“Movants”) have moved for a stay pending appeal of the Court’s May 24, 2018 Explanation and Order (ECF No. 10019). The Explanation and Order followed up on the Court’s April 5, 2018 Memorandum and its Order of that same date (ECF Nos. 9860-61) by allocating \$85,619,446.79 of its award of

\$108,442,700.12 in attorneys' fees to 26 law firms and individual counsel who performed common benefit work or provided other contributions on behalf of the Class.¹

The Court should deny a stay. Movants have no likelihood of success on their appeal of the Court's April 5 decision. As Co-Lead Class Counsel has demonstrated time and again, Movants' arguments in opposition to a fee award – including their latest salvo, an untimely and groundless motion for “reconsideration/new trial” (ECF No. 9926) – are utterly devoid of merit. In several instances (such as their inane evidentiary objections to the common benefit fee petition) their contentions have bordered on the frivolous. Given the deferential abuse of discretion standard of review that Movants must overcome, their appeal has virtually no prospect of success. Consequently, a stay would only result in unwarranted delay for the firms that performed common benefit work over the last six years, which are finally receiving compensation for that work.

Nor have Movants even attempted to show that they would be irreparably harmed in the absence of a stay. Their assertion of harm faced by the Class in the event of a distribution of fees is contrived. Conversely, counsel who stand to receive a common benefit fee award would be substantially injured by a stay in that their fees would be held up for the resolution of a baseless appeal. Finally, the public interest would be disserved by staying a distribution of fees to await the outcome of a meritless appeal that furthers no interest save the barrow agenda of these longstanding objectors, who unsuccessfully fought the underlying Settlement and have pursued a relentless campaign against the common benefit fee petition.

¹ As of this date, Movants have filed an appeal only from the Court's April 5 decision awarding common benefit fees and its concurrent decision issued the same day imposing a presumptive cap of 22 percent on individually-retained attorneys' fees. *See* ECF Nos. 9860, 9861, 9862, 9863 (April 5, 2018); ECF No. 9960 (May 3, 2018). They have filed required docketing papers in connection with that appeal, and counsel for both sides have entered appearances. *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 18-2012 (3d Cir.). The issuance of a briefing schedule is expected shortly. Movants have not yet filed an appeal from the Court's May 24, 2018 Explanation and Order (ECF No. 10019).

II. DISCUSSION

A. Applicable Standard

In order to determine whether a stay pending appeal is merited, the Court looks to whether (1) the movant has made a strong showing that it is likely to succeed on the merits; (2) it is likely that the movant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *E.g.*, *Hilton v. Braunskill*, 481 U.S. 770, 776-77 (1987) (citing authorities); *In re Revel AC, Inc.*, 802 F.3d 558, 568 (3d Cir. 2015); *Kathleen S. v. Dep't of Pub. Welfare*, 10 F. Supp. 2d 476, 477-78 (E.D. Pa. 1998) (citing cases); *AARP v. EEOC*, 390 F. Supp. 2d 437, 462 (E.D. Pa. 2005) (Brody, J.). The party seeking a stay bears the burden of making this showing. *In re BP Oil, Inc.*, 509 F. Supp. 802, 810 (E.D. Pa. 1981).

As developed below, under this four-factor test, Movants' stay request fails resoundingly.

B. Movants Have Next to No Probability of Success

Movants' bid for a stay founders on the very first prong of the test. They have virtually no chance of success of demonstrating that this Court abused its discretion in (1) awarding common benefit attorneys' fees and a reimbursement of common benefit costs and expenses (ECF No. 9860), and (2) allocating the attorneys' fees portion of the April 5 award (ECF No. 10019).² Far

² Courts' decisions awarding fees in class actions are reviewed only for an abuse of discretion. *E.g.*, *In re Diet Drugs*, 582 F.3d 524, 538 (3d Cir. 2009); *In re AT & T Corp.*, 455 F.3d 160, 163 (3d Cir. 2006); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 299 (3d Cir. 1998); *see also Dungee v. Davison Design & Dev. Inc.*, 674 F. App'x 153, 156 (3d Cir. 2017) (abuse of discretion standard applies to district court's choice of fee methodology in awarding fees to class counsel). Therefore, to succeed on appeal, Movants will have to demonstrate that this Court's decisions represent an abuse of its discretion.

from being “fundamentally flawed” (Mem. [ECF No. 10022-1] at 3),³ the Court’s decisions were manifestly correct.

Movants maintain that they have a strong likelihood of success for the reasons outlined in their motion for reconsideration/new trial, and incorporate the arguments in that motion by reference. *Id.* Specifically, they argue that the Court erred in (i) using a percent-of-recovery fee methodology in valuing the settlement and awarding fees; (ii) affording no “transparency or rigor” in conducting the fee proceedings; (iii) “depleting the settlement’s fee fund to the point that the Court must take money directly from the Class Members’ net recovery to ensure that future fees are paid”; and (iv) “compromising Class Member[s]’ access to independent representation via an effective and presumptive 17% private fee cap.” *Id.* at 3-4. None of these points withstands minimal scrutiny.⁴

First, in previous submissions, whether in response to Movants’ sundry filings or the filings of other counsel, Co-Lead Class Counsel has refuted Movants’ onslaught of arguments in opposition to a common benefit fee award and the requested set-aside or holdback from Monetary Awards. *E.g.*, ECF Nos. 7464 (at 15-30), 7606 (at 14-25), 8440, 8934 (at ¶¶ 17, 103-08), 9552 (at 4-11), 9996 (at 1-12). In particular, Co-Lead Class Counsel has demonstrated the eminent soundness of a percentage-of-recovery approach in constructive common fund cases such as this and that the Settlement is capable of valuation – and, in fact, has adduced evidence that the Settlement’s value exceeds the projections at the time that the Court approved it. *See* ECF Nos.

³ “Mem.” refers to pages of Movants’ “Memorandum in Support of Motion to Stay Enforcement of Attorneys’ Fee Allocation Order (ECF 10019) Pending Appeal [a]nd Request for Expedited Consideration” (ECF No. 10022-1).

⁴ Insofar as Movants incorporate the arguments in their untimely May 2, 2018 motion for reconsideration/new trial (ECF Nos. 9926, 9926-1) by reference (Mem. at 3), Co-Lead Class Counsel correspondingly adopts his response to that motion by reference. *See* ECF No. 9996.

7464 (at 15-21), 7464-12 (at 4-5), 8440 (at 7-8), 9552 (at 4-5), 9552-1 (at 5-12), 9885 (at 2-5, 7-8), 9996 (at 10-11).

Second, as for “transparency and rigor,” there can be no genuine dispute that the Court afforded ample process here. The Court permitted copious briefing in connection with both the fee petition itself and the matter of a common benefit fee award allocation, and it convened a hearing (*see* ECF Nos. 9997, 10015) with respect to the latter. In all, the fee petition proceedings spanned no fewer than fifteen months. To the extent that Movants continue to complain about the Court not having required the public production of the time records furnished by counsel who performed common benefit work and the Court’s review of those records *in camera*, Co-Lead Class Counsel has explained that Movants had no right of access to time records, especially in a percentage-of-the-fund case such as this, where a lodestar analysis is employed only as a rough cross-check. *See* ECF No. 9996, at 7-9.

Third, Movants’ assertion that the Court has “deplet[ed] the settlement’s fee fund” (Mem. at 4) is bizarre. That contention completely disregards that the Court has left not less than \$22,823,253.33 in the Attorneys’ Fees Qualified Settlement Fund (“AFQSF”) (along with interest accruing thereon) as available funds for compensating implementation-related work. *See* ECF No. 10019, at 25. The Court has *not* made a determination on Co-Lead Class Counsel’s separate request for a holdback from Class Members’ Monetary Awards, stating that the request is premature at present and that Court requires additional information before it can render a determination on that request, which it will take up again at a later date. ECF Nos. 9860 (at 2 & n.1, 8-9, 17), 10019 (at 4 n.2). Thus, the AFQSF has not been “deplete[ed].” The Court has imposed a five-percent holdback only provisionally, out of an abundance of caution. *See* ECF Nos. 9860 (at 18), 10019 (at 4 n.2).

To the extent that Movants continue to question the implementation-related work being performed (and to be performed), Co-Lead Class Counsel has provided much detail concerning that extensive work (including greater than anticipated work resulting from the altered dynamics of Co-Lead Class Counsel's dealings with the NFL created by the uncapped nature of the settlement that was ultimately approved) and has explained the need to fund the transition of implementation oversight to other counsel over the 65-year course of the Settlement. *See* ECF Nos. 7151-2 (at 32-35 [¶¶ 107-18]), 7464 (at 32-44), 8447 (at 15-19 [¶ 20]), 9552 (at 6-9).

Finally, the merits of the Court's ruling on the matter of a cap on individually-retained attorneys' fees are irrelevant to its common benefit fee award and therefore should have no bearing on whether the distribution of common benefit fees should proceed. At any rate, although Co-Lead Class Counsel has taken no position on the individual fee cap issue, Movants' contention that the fee cap adopted by the Court compromises Class Members' access to independent representation (Mem. at 4) is unfounded. No evidence was adduced to show that Class Members will be unable to obtain individual representation as a result of a cap. More importantly, Movants' argument ignores that the amount of work required of all individually-retained private counsel has been reduced by the extensive common benefit work performed by Co-Lead Class Counsel and others, and a cap on individual fees justly prevents free-riding by individual counsel who stand to benefit from that work while not having borne the costs. *See* ECF No. 9862, at 4-5.

C. Movants Face No Irreparable Harm

Nor have Movants demonstrated irreparable harm. Indeed, they face none – and do not even argue it. The only harm they point to is the alleged harm that Class Members will suffer because of the alleged depletion of the AFQSF once it is exhausted. That is specious because it is

simply implausible that the more than \$22.8 million remaining in the AFQSF will be dissipated during the pendency of Movants’ appeal.

The mere fact that, assuming a stay is denied, funds will be distributed to the counsel listed in the Court’s May 24 Explanation and Order does not rise to irreparable harm. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 479 (S.D.N.Y. 1998) (“Numerous courts have directed that the entire fee award be disbursed immediately upon entry of the award, or within a few days thereafter.”). Indeed, as a general matter, mere dissipation of funds is not irreparable harm. *See Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989) (“The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1964)) (internal citation and quotation marks omitted; emphasis in original).

In any event, wiring instructions that have been sent to each firm or counsel designated for distributions under the Explanation and Order require a written commitment to return funds in the event of a reversal on appeal, which will help ensure that distributed funds are recovered in the unlikely event that Movants’ appeal is successful. Declaration of Christopher A. Seeger, dated May 31, 2018, at ¶ 4; *see Brady v. Airline Pilots Ass’n, Int’l*, No. 02-2917 (JEI/KMW), 2014 WL 12767679, at *1 (D.N.J. Dec. 16, 2014) (allowing class counsel to withdraw portion of its allocated share from settlement fund where class counsel agreed to make repayment in event of objectors’ success on appeal); *cf. In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *20 (N.D. Ohio Sept. 23, 2016) (“Nearly all quick-pay clauses

... contain reversionary language, requiring counsel to return the fees paid if the award is reversed on appeal.”); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880, at *10 (N.D. Cal. Feb. 17, 2016) (“The plaintiffs’ counsel has the option of being paid fees before resolution of any appeal; they also must return them immediately if the settlement is overturned on appeal.”). Plainly, there would be no irreparable harm if awards in accordance with the Explanation and Order are distributed in the meantime.⁵

D. The Remaining Factors Also Militate Against a Stay

Turning to the final two criteria, a stay would substantially injure the affected counsel who performed common benefit work. They labored for six years on behalf of the Class and would have to wait many more months to be compensated for their endeavors.

Similarly, the public interest does not favor a stay. The public interest would not be served by holding the distribution of well-earned fees hostage to an utterly meritless appeal. Put another way, Movants’ meritless appeal is only one more facet of their longstanding campaign to throw sand in the gears; it vindicates no public interest.

Movants contend that Class Members are entitled to a transparent fee process (Mem. at 4), but Class Members received precisely that here. Finally, Movants’ contention that a stay would “[a]llow[] an appeal to test the process before giving away Class Members’ settlement money” (*id.*) is disingenuous. It is not Class Members’ settlement money that will be “giv[en] away.”

⁵ Contrary to Movants’ suggestion, the Third Circuit in *In re Diet Drugs*, 582 F.3d 524 (3d Cir. 2009), did not counsel that the practical difficulties associated with administering a redistribution of fees in the event of an appellate reversal *ipso facto* warrants a stay. Rather, the Court of Appeals simply noted that the objector-appellant who complained about such difficulties had never even bothered to seek a stay. *See* 582 F3d at 552. At any rate, given the written undertaking that firms and counsel designated for awards will have to provide in order to receive funds, *see supra* at 6, there would be no practical difficulties to untangle here.

Rather, common benefit attorneys' fees are being paid directly by the NFL. *See* Settlement Agreement, as Amended § 21.1, ECF No. 6481-1, at 81-82 (Feb. 13, 2015).⁶

E. If the Court Is Inclined to Grant a Stay, Movants Should Be Ordered to Post a Supersedeas Bond, in Accordance with Fed. R. Civ. P. 62(d)

Movants contend that the Court should exercise its discretion to waive the supersedeas bond requirement of Fed. R. Civ. P. 62(d).⁷ The Alexander Objectors, through their counsel, have acted time and again to thwart both Class Counsel's fee petition as well as the underlying Settlement. Given their obstructionist tactics, they should not be entitled to the favorable exercise of discretion that might be afforded an ordinary litigant who appeals an unfavorable judgment requiring that litigant to pay money damages.

There is a perfected judgment determining that Class Counsel are entitled to the fees that are being held in the AFQSF. *See* ECF No. 10019, at 1, 25-26 ("On April 5, 2018, I issued a Memorandum Opinion awarding Class Counsel \$106,817,220.62 in attorneys' fees;" "[I]t is **ORDERED** that the Fund Administrator for the [AFQSF] shall pay each of the firms listed below

⁶ Movants contend that the Court's allocation order is subject to the automatic fourteen-day stay of enforcement of judgments under Rule 62(a) of the Federal Rules of Civil Procedure. Mem. at 2 (citing *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 230-31 (5th Cir. 2008)). Rule 62(a) however, is inapplicable where, as here, there is no pending judgment against Movants that is subject to execution. *See Bishop v. Deputy*, No. 01-753-SLR, 2003 WL 22284037, at *4 (D. Del. Sept. 29, 2003), *aff'd*, 95 F. App'x 462 (3d Cir. 2004). The *High Sulfur* case upon which Movants rely is distinguishable because, there, the Fifth Circuit was troubled by the district court having conducted fee allocation proceedings *ex parte*. *See* 517 F.3d at 231-32. At any rate, this Court is not bound by Fifth Circuit law.

⁷ Movants' citation to the hypothetical situation discussed in *In re Diet Drugs*, 582 F.3d at 552 for support as to the alleged appropriateness of waiving the supersedeas bond requirement is unavailing. *See Naughton v. Harmelech*, No. 09-CV-5450 (KM)(MAH), 2016 WL 7045712, at *1 (D.N.J. Dec. 1, 2016) (citing *Diet Drugs*, but noting that "[t]he Court of Appeals for the Third Circuit has not squarely addressed whether a district court may waive the bond requirement."). Distinguishing his own opinion in *Munoz v. City of Philadelphia*, 537 F.Supp.2d 749 (E.D. Pa.), noting that he waived the supersedeas bond requirement in that case because it "would have caused an unnecessary waste of taxpayers' money," Judge Bartle denied a request for a waiver in *Evergreen Comm. Power, LLC v. Riggs Distler & Co., Inc.*, No. 10-728, 2012 WL 2974891, at *2 (E.D. Pa. July 19, 2012).

the amounts, as set forth below, from the AFQSF.... It is further **ORDERED** that each of the law firms listed above shall cooperate with the Fund Administrator of the AFQSF to effectuate this Order.”). Movants have no legal claim to the awarded fees, and are seeking to obstruct the Court-ordered distribution. The fees have been awarded to Class Counsel, who will be denied their use for the pendency of an appeal that could take a year to resolve, should the Court grant a stay. Under such circumstances, a supersedeas bond is fully warranted and there is no justification for a waiver of that requirement.

III. CONCLUSION

For the foregoing reasons, the Court should deny a stay. If the Court, however, determines that a stay is appropriate, Movants should be required to post a supersedeas bond.

Date: May 31, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
cseeger@seegerweiss.com
Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on May 31, 2018.

/s/ Christopher A. Seeger
Christopher A. Seeger

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL	§	
LEAGUE PLAYERS’ CONCUSSION	§	
LITIGATION	§	
_____	§	No. 12-md-2323 (AB)
	§	
	§	MDL No. 2323
THIS DOCUMENT RELATES TO:	§	
ALL ACTIONS	§	

**Movants’ Reply in Support of Their Motion to Stay Enforcement of
Attorneys’ Fee Allocation Order (ECF 10019) Pending Appeal and
Request for Expedited Consideration**

The Alexander Objectors and Lubel Voyles, LLP (“Movants”) file this reply in support of their Motion to Stay Enforcement of the Court’s Attorneys’ Fee Allocation Order (ECF 10019) pending appeal of that order (ECF 10036), as well as the underlying but related orders (i) awarding common benefit fees (ECF 9860/9861), (ii) maintaining a 5% holdback from Class Members’ recoveries for future fees (ECF 7151), and (iii) presumptively limiting the effective IRPA fee recovery to 17% (ECF 9862/9863).

REPLY

Movants have asked that the Court maintain the *status quo* with respect to the \$112.5 Fee Fund pending an appeal of the Court’s decisions about the disposition of that fund. It is not remarkable that Co-Lead Class Counsel pleads for immediate disbursement of \$86.5 million on the claim that Movants’ appeal has no merit; the chief, one-year strategy of Co-Lead Class Counsel in this fee dispute amounts to no more than name calling and

character assassination of anyone who voices any legal opposition.¹ But, Movants have brought a legitimate and respectful challenge in law.

What is remarkable is Co-Lead Class Counsel's comparison of the harm to be suffered by each party in the absence of a stay: Class Counsel, it is urged, *deserve* the \$85.6 million now; the Class Members, the argument continues, are unimpacted by that percent-of-recovery reward. Co-Lead Class Counsel's position defies the settlement terms and reality. The Fee Fund is all that the NFL will contribute toward fees for the 65-year life of this Settlement and Class Counsel asked for all of it in year one. Class Members are directly taxed for fees when the Fee Fund is gone and, in recognition of that reality, the Court is already holding Class Members' funds in preparation for the inevitable. This request for stay asks that the Court hold the Fee Fund intact, allowing it to multiply, while the Court of Appeals determines whether invasion of Class Members' money is, in fact, inevitable.

1. The appellate issues are meritorious and the Third Circuit will not accord full deference to this Court on most of the issues presented.

Co-Lead Class Counsel rests its assessment on the unlikelihood of Movants' success on appeal upon a mistaken belief that the Third Circuit will

¹ Co-Lead Class Counsel attempts to characterize Movants as the lone obstacles to the course charted by the Court. The Court knows well that the opposite true. Co-Lead Class Counsel stands alone on most of the fee issues, including the 5% holdback necessitated (even prophylactically) by the \$112.5 Petition for Fees. For example, Co-Lead Class Counsel Sol Weiss argued the 5% holdback wasn't necessary (ECF 9548) And, Class Counsel Gene Lockes argued neither \$112.5 million fees nor a 5% holdback were necessary (ECF 9579) ("it would be premature for the Court to issue an award of all or substantially all common benefit fees at this stage). The Court's appointed expert urged that 5% was not necessary and, at a minimum was excessive, particularly if some of the Fee Fund was held and invested (ECF9526, p. 1; ECF 9571, p. 4) And, Movants were among the first, in March, 2017 (ECF 7355, pp 57-58), to challenge the 5% holdback and urge that the Court invest some of the Fee Fund for regeneration. But, still, the Court is holding the 5% as sought by Co-Lead Counsel Seeger, alone. Movants' challenge is not rogue.

apply an abuse of discretion standard. (ECF 10031, p. 3 n. 2) Not so. In fact, most of the merits of Movants’ appeal will be governed by a less deferential standard of review.

For example, Movants challenge the standard by which the Court awarded fees in this case; the Court’s decisions on the standard for calculating attorneys’ fees are subject to **plenary** (no deference) review in the Third Circuit. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir.2005). So, the Court’s first substantive fee decision—that “the case is most appropriately reviewed as a ‘common fund’” (ECF 9860, p. 5)—is accorded no deference on appeal. The Court’s decision to use percent-of-recovery under the circumstances of this Settlement Agreement² is unprecedented, particularly as the Court and Class Counsel agree this fee does not come from a “common fund.” *See In re NFL*, 307 F.R.D. 351, 374 (E. D. Pa. 2015) (citing Settlement § 21.1 and stating “[a] fee award in this case will not come from a common fund”); *see also* ECF 7151, Co-Lead Class Counsel stating “[t]he instant case does not involve either an application for assessment of fees against the defendant pursuant to a fee-shifting statute, or a traditional common fund out of which payment of fees are sought”).

Understandably, the Court has observed Class Counsel’s many hours of effort on behalf of former NFL Players and wishes to compensate those efforts. An interim lodestar would have accomplished just that. Instead, the Court has followed Co-Lead Class Counsel’s entreaties to speculate on the value of a Settlement Agreement solely from pre-Settlement actuarial data and

² Those circumstances are: The settlement is uncapped. The value of the Settlement is unknowable because even registered Class Members are not guaranteed any payment, the value is computed entirely upon actuarial data generated pre-settlement; and the actuarial data for 97% of the Class Members is an extrapolation inasmuch as the disease category is a Settlement Agreement fiction.

registrants to award Class Counsel a substantial percentage of a recovery that has not—and may not be—realized. A challenge to the Court’s use of percent-of-recover, without analysis of other, fiscally prudent methods to conserve the fund, is at the heart of this appeal. Class Members’ funds should not be at risk during this *bona fide* challenge to methodology.

Further, Movants challenge the process by which the Court arrived at a fee award of \$112.5 million; an allocation of \$85 million solely for Class Counsel’s negotiation of the settlement; a 5% tax on Class Members’ recoveries; and a cap on private counsel fees. In particular Movants challenge (i) the lack of open access, (ii) the failure to afford discovery, and (iii) the failure to establish an orderly fee review required by the Settlement Agreement.

Specifically, faced with a \$112.5 million Fee Petition that would completely drain the fund, Movants sought a Fee Fund Case Management Order pursuant to the Settlement Agreement (ECF 7176; ECF 6087, ¶ 14, stating that “motions for an award of attorneys’ fees and reasonably incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, may be filed at an appropriate time to be determined by the Court, after the Effective Date of the Settlement Agreement”). Movants also sought leave to serve fee-petition discovery (ECF 7534) in order to cross-examine the only evidence ever proffered on “reasonableness” of fees—Co-Lead Class Counsel Mr. Seeger’s statement that he “deemed all work being billed reasonable, necessary, and non-duplicative” *See* ECF No. 7152-2 at ¶¶ 72-73, 75.

Movants also sought “open access” to Class Counsel’s contemporaneously-maintained fee data between 2012 and 2017 (ECF 8396). The Court had ordered that data maintained quarterly and audited (ECF 3710,

Case Management Order No. 5, p. 3, 9). Class Members' Monetary Award Fund presumably paid for such audits, but none of that information was ever filed or supplied to Class Members.

Ultimately, the Court refused to make the CMO data public (ECF 9510). Yet, the Court based its \$112.5 million award order (ECF 9860) and its \$86.5 million allocation order (10019) on Iodestar data supplied *in camera* upon the Court's *sua sponte* request (ECF 9860, p. 15). Co-Lead Class Counsel never urged a privilege over those records and Co-Lead Class Counsel gave Class Members no notice that the records were tendered to the Court. But, based upon those records, the Court found that the hours Class Counsel had alleged were spent on common benefit to the class to be fair, reasonable, and presumably nonduplicative. *Id.*; see *See Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) (holding that to arrive at a reasonable number of hours worked, the court must excise those hours deemed excessive, redundant, or otherwise unnecessary); see also *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3d Cir.1983) (explaining that Class Counsel must properly delegate tasks so that "a Michelangelo [does] not charge Sistine Chapel rates for painting a farmer's barn"). The process lacked transparency and rigor.

As an additional process problem, the Court appointed a Rule 706 expert on certain fee questions. Movants pointed out the expert's conflict of interest—having served as a paid expert for Class Counsel (ECF 8350, pp. 7-9). Class Counsel admitted the conflict (ECF 8372, "This is to advise the Court that on February 7, 2012, I, Sol H. Weiss, retained William Rubenstein to work with and give advice to the Plaintiff's Steering Committee."). Therefore, the Court ordered that the parties would have a chance to depose the expert under Fed. R. Civ. P. 706 to explore the conflict (ECF 8376, "All parties will have an opportunity to respond to Professor Rubenstein's report

in writing and, pursuant to the provisions of FRE 706(b)(2), any party may depose Professor Rubenstein about his opinion after his report is submitted.”). The Court changed course, however, once the expert filed a report (ECF 9527). Though the expert did not address the conflict in that report, the Court denied Movants a deposition despite repeated requests (ECF 9356, 9554, 9558 n. 5). The expert, Professor Rubenstein, opined that the Court was authorized to cut private fees in order to ensure Class Counsel’s fees did not cause overall fees to be excessive (ECF9526; ECF 9571). And, Professor Rubenstein ultimately opined that if the Court determined to tax Class Members’ recoveries to pay future fees, that tax should not exceed 2% (ECF 9571).

The Third Circuit does not afford full “first-hand observation[]’ deference to district court decisions that implicate open access.” *See In re Cendant Corp.*, 260 F.3d 183, 197 (3d Cir. 2001). Therefore, Class Members’ funds should not be at risk during this *bona fide* challenge to a process that excluded Class Members from meaningful and adversarial participation in the process.

Finally, the Court’s construction of the Settlement Agreement, including the common benefit fee process and the 5% holdback process will also receive plenary review by the Third Circuit. *See In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 193 (3d Cir.2000) (holding that “contract construction, that is, the legal operation of the contract, is a question of law mandating plenary review”).

II. Irreparable harm will befall Class Members if there is no stay.

First, Co-Lead Class Counsel persists in its illogical attempts to uncouple the Fee Fund from Class Members’ settlement money. *See* ECF10031, p. 8 (Arguing that “[i]t is not Class Members’ settlement money that will be give[n] away”). These funds are inextricably intertwined because

once the Fee Fund is gone, all fees and expenses are paid directly by Class Members. And, according to Co-Lead Class Counsel, the Court has already awarded the entire fee fund, even though only \$85.6 million of that sum has been allocated. As such, the entire \$112.5 million Fee Fund has been awarded to twelve attorneys in twenty-six law firms.

As *prima facie* proof of the link between fees and Class Member money, the Court is already holding back 5% of every Class Members' monetary recovery as insurance against full depletion of the Fee Fund. Co-Lead Class Counsel's answer to that reality is pure speculation: "[I]t is simply implausible that the more than \$22.8 million remaining in the [Fee Fund] will be dissipated during the pendency of Movants' appeal"³ (ECF 10031, p. 6-7) Co-Lead Class Counsel completely misses the point. The Court is prophylactically holding Class Members' money *because*, based upon the status of the Fee Fund, the Court cannot be sure the money will not be necessary. Thus, for the protection of future fees, the Court is depriving the most injured former NFL Players use of 5% of their money. These are former players with ALS, Alzheimer's, and Parkinson's. In this first year, the NFL Concussion website shows that the Court has held \$21,919,882 in settlement money from players without any forecast or promise about when or whether or how, during the 65-year settlement, those funds might be returned. Most of those players will never have a chance to use that money—even if the

³ Co-Lead Class Counsel apparently forgets that the Court has already pledged a large sum of that \$22.8 million. Class Counsel has already requested, and the Court has approved as reasonable, payment for 6,830 hours "implementation" fees through September, 2017. (ECF 9860, p. 15). Those fees are not part of the \$85.6 million. As such, *assuming* that the Court only awards lodestar for implementation work (instead of additional percent of the recovery) and *assuming* that the Court awards the blended rate of \$623.05 (ECF 9860, p.16) instead of the \$985 rate sworn to by Co-Lead Class Counsel (ECF 7171, Addendum No. 1) but found unreasonable by the Court, Class Counsel has already depleted the Fee Fund by an additional \$4.26 million for less than a year of work up to September, 2017.

decision is reversed on appeal. It is imminently reasonable for the Court to prophylactically withhold fees, not for 65 years, but for the duration of an appeal, so that Class Members' funds are preserved for their benefit.

Then, Co-Lead Class Counsel urges that there is no irreparable harm to Class Members, including Movants, if the Court distributes the \$85.6 million from the Fee Fund now because Class Counsel must make a "written commitment to return funds in the event of a reversal on appeal" (ECF10031, p. 6-7). Co-Lead Class Counsel forgets that the *interest* that will be earned on that \$85.6 million during the appeal approaches \$1 million. Class Counsel make no promise to refund fees plus interest lost by the distribution "in the event of a reversal on appeal." That money will be irrevocably lost to Class Members.

III. Class Counsel could have avoided any harm they claim they will suffer if the Court stays distribution of the full \$86.5 million pending appeal.

The Court issued the original order awarding Class Counsel \$106 million in fees on April 5, 2018 (ECF 9860). Movants timely appealed that order on May 3, 2018 (ECF 9960). *Subsequently*, on May 15, 2018, the Court held an allocation hearing. Knowing there was an appeal pending, Co-Lead Class Counsel could have asked the Court to award, at a minimum or in the interim, its lodestar fee pending an appeal. But, it did not. Stated differently, Co-Lead Class Counsel does not and cannot argue that it is harmed by not receiving the bonus on top of its lodestar. Instead, Co-Lead Class Counsel complains of harm in delay of "compensation for [] work" (ECF 10031, p. 2). That is, hours reasonably worked multiplied by a reasonable rate.

PRAYER

Movants ask the Court to stay the enforcement of its allocation Order (ECF 10019) and the underlying, related orders awarding common benefit fee (ECF 9860/9861) and maintaining a 5% holdback from Class Members' recoveries for future fees (ECF 7151); and the Court's Order/Memorandum Opinion (ECF 9862/9863) presumptively limiting the effective IRPA fee recovery to 17%.

Date: June 1, 2018

Respectfully Submitted,

Mickey Washington
Texas State Bar No.: 24039233
WASHINGTON & ASSOCIATES,
PLLC
2019 Wichita Street
Houston, Texas 77004
Telephone: (713) 225-1838
Facsimile: (713) 225-1866
Email: mw@mickeywashington.com

James Carlos Canady
Texas State Bar No.: 24034357
THE CANADY LAW FIRM
5020 Montrose Blvd., Suite 701
Houston, TX 77006
Telephone: (832) 977-9136
Facsimile: (832) 714-0314
Email: ccanady@canadylawfirm.com

/s/ Lance H. Lubel
Lance H. Lubel
Texas State Bar No.: 12651125
Adam Voyles

Texas State Bar No.: 24003121
LUBEL VOYLES LLP
675 Bering Dr., Suite 850
Houston, TX 77057
Telephone: (713) 284-5200
Facsimile: (713) 284-5250
Email: lance@lubelvoyles.com
adam@lubelvoyles.com

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2018, I filed the foregoing through the Court's CM/ECF system, which will provide electronic notice to all counsel of record and constitutes service on all counsel of record.

/s/ Lance H. Lubel

Lance H. Lubel

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MOTION OF CLASS COUNSEL
THE LOCKS LAW FIRM FOR RECONSIDERATION
OF THE COURT'S EXPLANATION AND ORDER (ECF 10019)
CONCERNING THE ALLOCATION OF COMMON BENEFIT FEES**

Class Counsel the Locks Law Firm (LLF) respectfully moves for reconsideration of the Court's Explanation and Order concerning the allocation of common benefit fees (ECF 10019). The grounds for this Motion, which are more fully set forth in the accompanying Memorandum, are:

1. LLF respectfully requests that the Court adjust the firm's lodestar multiplier to 2.25 to bring the firm into conformity with other class counsel. LLF's 1.25

multiplier is the result of an erroneous misapplication of the methodology that this Court adopted when it accepted the recommendation of Mr. Seeger.

2. The methodology for calculating multipliers proposed by Mr. Seeger and accepted by the Court relied substantially on the expert opinion of Professor Brian Fitzpatrick of Vanderbilt Law School. Professor Fitzpatrick identified three factors that would govern proposed multipliers. LLF satisfies all three of these factors and has from the beginning of these proceedings. These facts are undisputed.

3. Nonetheless, Professor Fitzpatrick erroneously excluded LLF from two of the three factors in his analysis, thereby erasing the firm's contributions from the outset of the litigation and its role in preserving the viability of the proposed Settlement with its massive client base.

4. This erroneous exclusion is a clear misapplication of the methodology that Professor Fitzpatrick and Mr. Seeger cited for determining lodestar multipliers and that this Court relied on when it accepted Mr. Seeger's proposal.

WHEREFORE, the Locks law Firm respectfully request that the Court reconsider its Explanation and Order (ECF 10019) and enter the Proposed Order, attached hereto, that grants the Motion and a multiplier to the Locks Law Firm of 2.25.

Dated: June 7, 2018

Respectfully submitted,

/s/ Gene Locks

Gene Locks
David D. Langfitt
LOCKS LAW FIRM
The Curtis Center
Suite 720 East
601 Walnut Street
Philadelphia, PA 19106
Phone: 215-893-3423

Fax: (215) 893-3444
glocks@lockslaw.com
dlangfitt@lockslaw.com

Tobias Barrington Wolff
Professor of Law,
University of Pennsylvania Law School*
3501 Sansom Street
Philadelphia, PA 19104
Phone: 215-898-7471
twolff@law.upenn.edu

*For identification purposes only

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**MEMORANDUM IN SUPPORT OF THE
MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM FOR
RECONSIDERATION OF THE COURT'S EXPLANATION AND
ORDER CONCERNING THE ALLOCATION OF COMMON BENEFIT FEES**

Class Counsel the Locks Law Firm (LLF) respectfully submits this request for reconsideration of the Court's Explanation and Order concerning the allocation of common benefit fees (ECF 10019).

LLF asks that the Court reconsider just one component of its allocation order: the multiplier applied to LLF's lodestar value. The Court accepted the recommendation of Co-Lead Counsel Chris Seeger that LLF receive a multiplier of only 1.25 on its time, while all other Class Counsel in this MDL received multipliers ranging from 2.25 to 3.5.

LLF respectfully requests that the Court adjust LLF's multiplier to 2.25 to bring the multiplier into conformity with other class counsel and the three factors Mr. Seeger's proffered expert identified, all of which LLF satisfies and has satisfied from the outset of this proceeding.

The basis for this motion is straightforward. In his recommendation, Mr. Seeger set forth a methodology he used to calculate the proposed multipliers and relied substantially on the expert opinion of Professor Brian Fitzpatrick of Vanderbilt Law School, whom he retained for the exercise. Mr. Seeger and Professor Fitzpatrick both identified three factors that would govern the proposed multipliers:

1. Firms that played a leadership role in the proceedings as co-lead counsel, class counsel, or sub-class counsel.
2. Firms that made contributions from the outset of the litigation.
3. Firms that worked directly on settlement negotiations or supported the settlement on appeal or otherwise once it was consummated.

LLF's work on behalf of the class clearly satisfies each of these three factors, as the firm explained in its objection to the proposed allocation (ECF 8709 at 3, 20-22) and reiterated at the May 15 hearing. LLF served as Class Counsel throughout these proceedings (factor 1), and the firm was one of the prime movers of the litigation from its earliest stages, filing some of the first individual and class complaints, arguing for the creation of this MDL, drafting the Master Personal Injury and Class Action complaints, and investing the financial, intellectual, and reputational capital from the beginning that contributed to making these proceedings viable (factor 2). These facts are not disputed. And LLF made invaluable contributions to the viability of the proposed settlement. It worked regularly with over 1,400 individual clients — the largest number of any firm — to ensure that former players understood the risks of proceeding with litigation and the

benefits and tradeoffs of the Settlement so they could make an informed decision about staying in the Settlement rather than opting out or objecting.¹ Whatever sources of disagreement arose between Mr. Seeger and LLF about the role the firm played earlier in the negotiations, there is no dispute that the firm's role in working every day to keep its massive client base invested in the proposed settlement was substantial and essential, as Mr. Seeger admitted at the Court's prompting during the hearing on May 15.²

LLF therefore satisfied all three of the factors that Mr. Seeger and Professor Fitzpatrick identified in their methodology for calculating multipliers.

Despite this fact, Professor Fitzpatrick's expert opinion excludes LLF from factor 2 and factor 3, erasing altogether the firm's contributions from the outset of the litigation and its role in preserving the viability of the proposed settlement with the player population. *See* ECF 8447-2 at ¶¶ 7, 8 and 9 and footnote 2. The improper exclusion of LLF from these two categories was then used to justify its lower multiplier. Whether this improper exclusion was a simple error or the product of incomplete information provided to Professor Fitzpatrick, it is in fact an error.

¹ Mr. Seeger received immense benefit from LLF serving in the role of Class Counsel. LLF was on the PEC from the beginning, had filed four times more cases than any other firm, and had developed the required medical knowledge far in advance of any other firm. Without LLF's steady support of the Settlement, the number of objectors and opt-outs could have spiraled upward, jeopardizing the Settlement's viability.

² As LLF explained in its objections to Mr. Seeger's proposed allocation, the suggestion that Mr. Locks' interview in *Business Week* constituted some kind of breach of confidentiality in the negotiations — the issue cited by the Court as a reason for relying on Mr. Seeger's recommendation — is incorrect. That interview took place more than a month before substantial negotiations between the parties had begun. *See* G. Locks Declaration (ECF 8709 at 18). There was no leak of negotiated information at all. The NFL's objection to the article was based on its sensitivity to unfavorable and truthful public exposure of its litigation risks.

LLF recognizes that the Court has discretion to adopt a range of different approaches in assigning multipliers to a lodestar amount. But when the Court invites Co-Lead Counsel and his expert to propose a methodology and the proposal is then misapplied to LLF on its own terms, it is a clear error of law for the Court to adopt that misapplication. That “clear error of law” warrants reconsideration of the Court’s order. *See Simon Wrecking Co. v. AIU Insurance Co.*, 541 F. Supp. 2d 714, 715–716 (E.D. Pa. 2008) (Brody, J.).

To reiterate, LLF seeks reconsideration of only one part of the Court’s order: its adoption of the proposed lodestar multiplier of 1.25, which is based on a clear misapplication of the proposed methodology on which the Court relied when making its decision. LLF respectfully requests that the Court recalculate the multiplier figure with a proper recognition of LLF’s contributions from the outset of the litigation (factor 2) and the significance of its role in preserving the viability of the proposed settlement with its massive client base (factor 3). LLF suggests that a multiplier of 2.25 — the same multiplier received by class counsel Podhurst Orseck and subclass counsel Arnold Levin — is the appropriate figure once the error in methodology is corrected.

Dated: June 7, 2018

Respectfully submitted,

/s/ Gene Locks
David D. Langfitt
LOCKS LAW FIRM
The Curtis Center
Suite 720 East
601 Walnut Street
Philadelphia, PA 19106
Phone: 215-893-3423
Fax: (215) 893-3444

glocks@lockslaw.com
dlangfitt@lockslaw.com

Tobias Barrington Wolff
Professor of Law,
University of Pennsylvania Law School*
3501 Sansom Street
Philadelphia, PA 19104
Phone: 215-898-7471
twolff@law.upenn.edu

*For identification purposes only

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Motion for Reconsideration was served on this date via the Electronic Filing System on all counsel of record in Case No. 2:12-md-02323-AB, MDL No. 2323.

DATE: June 7, 2018

/s/ Gene Locks
Gene Locks, Class Counsel

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this _18th_ day of June, 2018, it is ORDERED that The Alexander Objectors Motion to Reconsider Withdrawing Fed. R. Evid. 706 Deposition and for Extension of Time to Respond to the Expert Report of Professor William B. Rubenstein (ECF No. 9536) is **DENIED** as moot.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this _18TH_ day of June, 2018, it is ORDERED that the Motion requesting the Court to direct the relevant parties to negotiate on the allocation of the common benefit fund (ECF No. 9577) is **DENIED** as moot.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**OPPOSITION OF CO-LEAD CLASS COUNSEL TO MOTION OF
THE LOCKS LAW FIRM FOR RECONSIDERATION OF
THE COURT'S EXPLANATION AND ORDER (ECF 10019)
CONCERNING THE ALLOCATION OF COMMON BENEFIT ATTORNEYS' FEES**

I. INTRODUCTION

Co-Lead Class Counsel Christopher A. Seeger (“Co-Lead Class Counsel”) respectfully submits this opposition to the Motion of the Locks Law Firm (“Locks”) for reconsideration (ECF No. 10073) of the Court’s May 24, 2018 Explanation and Order (ECF No. 10019) allocating common benefit attorneys’ fees (“Allocation Order”). Because Locks’ reconsideration motion fails to satisfy the high standard for reconsideration the Court should deny it.

II. DISCUSSION

Given courts’ interest in finality, “motions for reconsideration should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court.” *Jarzyna v. Home Properties, L.P.*, 185 F. Supp. 3d 612, 622 (E.D. Pa. 2016) (citation and internal quotation marks omitted). Indeed, “[m]otions for reconsideration are generally disfavored for a number of important reasons. One of the reasons is that they tend to waste time on issues that have been, or should have been, decided previously.” *Spear v. Fenkell*, No. CV 13-02391, 2015 WL 5582761, at *4 (E.D. Pa. Sept. 21, 2015) (internal citation omitted); *accord Rashid v. Ortiz*, No. CR 08-493, 2016 WL 7626712, at *2 (E.D. Pa. June 20, 2016) (“Reconsideration is disfavored[.]”).

Therefore, a motion for reconsideration may not “be used to give a litigant a ‘second bite at the apple’ as to an argument on which it previously did not succeed.” *Romero v. Allstate Ins. Co.*, 1 F. Supp. 3d 319, 429 (E.D. Pa. 2014); *accord U.S. Claims, Inc. v. Flomenhaft & Cannata, LLC*, 519 F. Supp. 2d 515, 526 (E.D. Pa. 2007) (reconsideration motion is not properly “grounded on a request that a court rethink a decision it has already made”) (citation and internal quotation marks omitted); *The Ltd., Inc. v. Cigna Ins. Co.*, 228 F. Supp. 2d 574, 582 (E.D. Pa. 2001) (reconsideration motions are “not to be used merely as an opportunity to reargue issues that the

Here, Locks points to no manifest error in the Court's Allocation Order. Instead, Locks merely rehashes the arguments that he had fully presented in his counter-declaration to Co-Lead Counsel's recommended allocations (ECF No. 8709) and through separate counsel,¹ at the May 15, 2018 allocation hearing (ECF Nos. 9997, 10015).² In short, Locks argues that the undersigned and now the Court did not properly appreciate the value of his work and that he should be paid more. Having heard Mr. Locks' arguments, the Court held in the Allocation Order that:

¹ Professor Tobias Wolff, who is not a member of the Locks Firm, rather than Mr. Locks, presented arguments on behalf of Mr. Locks' firm at the May 15, 2018 allocation hearing.

2

have chosen. The firm, however, will be compensated more than \$3.8 million for their services – only four other firms will receive a higher payment from the common benefit fund.

Allocation Order, at 16.

The Court made this determination in the sound exercise of its considerable discretion. *E.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998) (“In awarding attorneys’ fees, the district court has considerable discretion.”); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 309 (1st Cir. 1995) (fee allocations are reviewed only for abuse of discretion). A second-guessing of the exercise of discretion does not amount to a demonstration of manifest error. *Cf. United States v. Claxton*, 766 F.3d 280, 307 (3d Cir. 2014) (“Under an abuse of discretion standard, we will not second-guess the District Court's determination[.]”); *United States v. Taylor*, 569 F.3d 742, 747 (7th Cir. 2009) (“[W]hen reviewing only for an abuse of discretion, second-guessing the district court is something we will not do. A discretionary decision . . . implies a range of acceptable outcomes. So long as the judge's conclusion was within that range of outcomes, we will defer to his judgment, not substitute our own.”) (internal citations omitted).

In short, Locks offers nothing new to warrant the extraordinary relief of the Courts reconsidering of its allocation of common benefit fees to his firm.

III. CONCLUSION

For the foregoing reasons, the Court should reject Locks' attempt to revisit the Court's Allocation Order.

Date: June 20, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger

SEEGER WEISS LLP

55 Challenger Road, 6th Floor

Ridgefield Park, NJ 07660

cseeger@seegerweiss.com

Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on June 20, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civil Action No. 2:14-cv-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

FANCA OBJECTORS' PETITION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES



MOLOLAMKEN
LLP

HANGLEY
ARONCHICK
SEGAL
& PUDLIN

NFL Europe

Revised Settlement
June 25, 2014

Faneca Objection

Final Settlement
April 22, 2015

- No BAP for NFL-Europe-Only Players
- 2,300 players added to BAP: **\$13.2 million**
- No “eligible season” credit
- Partial “eligible season” credit: **\$23.6 million**

Value: \$36.8 million

Modification of the BAP

Revised Settlement
June 25, 2014

Faneca Objection

Final Settlement
April 22, 2015

- Cap of \$75 million
- No Cap: BAP Exam for all eligible class members
- Full value of supplemental benefits

Value: **\$29.6 million**

Waiver of Appeal Fee

Revised Settlement
June 25, 2014

Faneca Objection

Final Settlement
April 22, 2015

- \$1,000 fee – all cases
- Financial hardship waiver

Value: **\$11.6 million**

Death with CTE

Revised Settlement
June 25, 2014

Faneca Objection

Final Settlement
April 22, 2015

- Limited to deaths before **preliminary** approval
- Extended to deaths before **final** approval
- 111 additional class members eligible

Value: **\$44.6 million**

Faneca Objectors' Efforts To Cure Defects

1/6/2014	Class Counsel submit initial settlement for preliminary approval
5/5/2014	Faneca Objectors move to intervene
5/19/2014	Class Counsel oppose motion to intervene
6/25/2014	Class Counsel submit revised settlement for preliminary approval
7/2/2014	Faneca Objectors oppose preliminary approval
7/21/2014	Faneca Objectors file Rule 23(f) petition in Third Circuit
7/29/2014	Class Counsel file opposition to petition
10/6/2014	Faneca Objectors file objection to revised settlement (8 days early)
11/12/2014	Class Counsel file motion for final approval (response to objections)
11/19/2014	Fairness Hearing
12/2/2014	Faneca Objectors file post-hearing brief
12/16/2014	Class Counsel file reply in support of settlement

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-2416

In Re: NFL Players' Concussion

(District Court No. 2-12-md-2323)

O R D E R

It appearing that a timely post-decision motion of a type specified by Fed. R. App. P. 4(a)(4), is pending in the District Court, it is hereby ORDERED that the above-entitled appeal(s) is(are) stayed pending disposition of the motion. The parties are directed to file written reports addressing the status of the pending motion on **07/30/2018** and every thirty (30) days thereafter until the last motion is decided. The stay will automatically expire upon entry of the order disposing of the last post-decision motion.

This stay does not apply to the obligation to pay filing and docketing fees or the filing of the case opening forms. These obligations must be fulfilled within the time specified by the Federal Rules of Appellate Procedure and Third Circuit Local Appellate Rules.

It should be noted that, pursuant to Fed. R. App. P. 4(a)(4)(B)(ii), any party who wishes to challenge the order disposing of the post-decision motion must file a notice of appeal, or an amended notice of appeal. The notice of appeal or amended notice of appeal must be filed within the time prescribed by Fed. R. App. P. 4(a), measured from the date of entry of order disposing of the last remaining post-decision motion.

For the Court,

s/Patricia S. Dodszuweit
Clerk

Date: June 28, 2018

cc: All Counsel of Record

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 2ND _ day of JULY, 2018, it is **ORDERED** that the Motion for Reconsideration of the Denial of the Locks Law Firm's Motion for Appointment of Administrative Class Counsel (ECF No. 9921) is **DENIED**.¹

¹ In order to prevail on a motion for reconsideration, the moving party must demonstrate one of the following: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . . ; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). The Locks Law Firm has not made such a demonstration.

Nevertheless, the Locks Firm argues that the consideration of its role with Third-Party Funders in the Courts ruling was inappropriate and a "clear error of law." The Court does not find this to be a clear error, however, to the extent that the Third-Party Funder issue was a basis for the Court's decision, that basis is withdrawn. But, the Court's ultimate decision does not change because there were many other considerations that led to the denial. *See* ECF No. 9890, at 1-2.

Lastly, the Court has since enlisted the Locks Firm to lead the coordination of Third-Party Funder settlement-implementation issues. To date, the Locks Firm has performed admirably in that role.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Hon. Anita B. Brody

ORDER

AND NOW, this 9th day of July, 2018, it is **ORDERED** that the Locks Firm's Motion for Reconsideration of the Court's Explanation and Order (ECF Nos. 10072 & 10073) is **DENIED**.¹

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

¹ In order to prevail on a motion for reconsideration, the moving party must demonstrate one of the following: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . . ; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). The Locks Law Firm has not made such a demonstration.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**FIRST VERIFIED PETITION OF CO-LEAD CLASS COUNSEL
CHRISTOPHER A. SEEGER FOR AN AWARD OF
POST-EFFECTIVE DATE COMMON BENEFIT ATTORNEYS' FEES AND COSTS**

Pursuant to this Court's May 24, 2018 Explanation and Order (ECF No. 10019), Co-Lead Class Counsel Christopher A. Seeger ("Co-Lead Class Counsel") respectfully submits this First Verified Petition for an Award of Post-Effective Date Common Benefit Attorneys' Fees and Costs.

Based on the work undertaken from January 7, 2017, the Effective Date of the Settlement, to May 24, 2018, firms contributing to the common benefit of the Class dedicated over 13,500 hours for a lodestar at the blended rates set by the Court (*see* ECF No. 10019, at 7 n.4) of \$8,559,179.97 and incurred \$926,244.04 in expenses.

SUMMARY OF WORK COMPLETED - EFFECTIVE DATE TO MAY 24, 2018

As was outlined in and submitted with the initial Petition for an Award of Attorneys' Fees, Reimbursement of Costs and Expenses, Adoption of Set-Aside of Each Monetary Award and Derivative Claimant Award, and Case Contribution Awards for Class Representatives (ECF No. 7151), implementation of the Settlement Program necessarily began many months prior to the Effective Date. *Id.* at 25-26. Immediately after the Effective Date, several milestones demanded increasing dedication and commitment by Seeger Weiss and other firms to ensure that the Settlement's benefits were timely delivered to the Retired NFL Football Players and their families. Among the early components that had to be launched were: the commencement of registration on February 6, 2017; the opening of the Monetary Award Fund ("MAF") Claims Portal on March 23, 2017; the creation and unveiling of the national networks of neurologists and neuropsychologists authorized to make post-Effective Date diagnoses on April 7, 2018; and the commencement of the Baseline Assessment Program ("BAP") on June 6, 2017.¹

As of July 9, 2018, over 20,500 Settlement Class Members have registered in the Settlement Program, over 1,900 Claim Packages have been submitted, 489 Notices of Monetary Awards have issued, worth over \$475 million; and over 7,200 BAP examinations have been scheduled and over 5,700 appointments have been attended. *See*

¹ Co-Lead Class Counsel already outlined this work in submissions made to the Court after the Effective Date, including in Co-Lead Class Counsel's Omnibus Reply in Further Support of Petition for Award of Attorneys' Fees and Reimbursement of Expenses, Adoption of Set-Aside from Monetary and Derivative Claimant Awards, and Case Contribution Awards for Class Representatives, and in Opposition to Objectors' Cross-Petitions for Awards of Attorneys' Fees and Expenses (ECF No. 7464, at 24-33), the Declaration of Christopher A. Seeger in Support of Proposed Allocation of Common Benefit Attorneys' Fees, Payment of Common Benefit Expenses, and Payment of Case Contribution Awards to Class Representatives (ECF No. 8447, at 14-19), and the Opposition of Co-Lead Class Counsel Christopher A. Seeger to Motion of the Locks Firm for Appointment of Administrative Class Counsel (ECF No. 9885, at 7-14).

www.nflconcussionsettlement.com (last accessed July 10, 2018). These successes are not mere happenstance. Since the Effective Date, Seeger Weiss has worked tirelessly with other Class Counsel on numerous important matters, in coordination with the Administrators, the Special Masters, and the Court—and both cooperatively with and, as circumstances dictate, against the NFL—to facilitate and oversee the Settlement. The centerpiece of these efforts has been the weekly call Seeger Weiss hosts with the NFL Parties, the Claims Administrator, the BAP Administrator and the Lien Resolution Administrator, where ongoing issues and progress are hashed out. The 99th of these weekly calls took place on July 9, 2018. Work on the Settlement has been a daily and ongoing matter, requiring the dedication of many of Seeger Weiss’ attorneys and paraprofessionals, and focused around certain key areas that are summarized in the sections that follow.

Ensuring Inclusive, Class Member-Friendly Registration and Claims Processes: After delivering supplemental notice to the Class, Seeger Weiss dedicated hundreds of hours to the negotiation and development of the registration forms and procedures, in order to ensure that the process was efficient and accessible so that no eligible Class Member would be denied entry into the Settlement Program. Seeger Weiss undertook substantial efforts to drive registration, including appearances by Mr. Seeger at many NFL Alumni and annual NFL events across the country, hosting live webinar sessions and countless interviews by local and national media outlets, and responding, along with other Seeger Weiss attorneys and paralegals, to hundreds of calls from Retired NFL Football Players and their families. These efforts inured to the Class’ benefit. The number of Retired NFL Football Players and family members who registered far exceeded all projections:

20,504 Settlement Class Members timely registered (as of July 9, 2018), including over 17,200 Retired NFL Football Players and Representative Claimants.

Seeger Weiss worked with the Claims Administrator to continually update the Settlement's dedicated website ("Settlement Website"), including its "Frequently Asked Questions" ("FAQs") section, so as to ensure that Class Members have easy access to the most up-to-date information and clear guidance on the Settlement Program. Late in 2017, at the direction of the Court, Seeger Weiss worked for weeks with the Special Masters, the Claims Administrator, the BAP Administrator, the Lien Resolution Administrator, and the NFL to create an entirely revised and expansive set of FAQs that, in February of this year became the "rules of the road" for the Settlement, ensuring the Settlement Program remains accessible and transparent. (ECF Nos. 8930, 9137). Class Counsel also submitted comments on the FAQs. Seeger Weiss also worked on revisions to the Settlement Website as new phases began, and additional forms, procedures, and other documents were prepared for Class Members, such as those relating to the BAP Program and the appeals process.

Moreover, Seeger Weiss worked with counsel for the NFL Parties, the Administrators, and the Special Masters to ensure that all forms needed to submit a claim were prepared, and that they were all-inclusive and easily understood. Seeger Weiss drew on Class Counsel for input in the process of developing many of the forms used in the Settlement. Additionally, Seeger Weiss worked with the Claims Administrator, the NFL Parties, and the Special Masters to launch the on-line claims portal, which guides Class Members through the claims submission process. To make sure that Class Members receive all the support they deserve and need, Seeger Weiss continues to respond to hundreds of calls each month from Retired NFL Football Players and their families about the Settlement and its Claims Process.

Program, including, most importantly, their review of the Claim Packages for pre-Effective Date Qualifying Diagnoses.

Toward the end of 2017, it became apparent that the volume of claims, like registrations, exceeded projections, and one member of the AAP was not able to dedicate sufficient time to his responsibilities. Accordingly, the decision was made to remove that one member of the AAP and add two new members. The same process as with the initial selection of members was followed, leading to the appointment of two new AAP members (and the removal of the one AAP Member) on March 6, 2018 (ECF No. 9757). Seeger Weiss continually monitors the needs of the Settlement, including the potential need to add additional members of the AAP or AAPC.

Selection and Orientation of Hundreds of Individuals to Serve as Qualified BAP Providers and Qualified MAF Physicians and Maintenance of These Physician Networks: The time-consuming vetting process associated with the selection of Qualified BAP Providers and Qualified MAF Physicians included a detailed review of each provider's curriculum vitae and application, as well as in-depth internet searches to ensure the qualifications of each candidate. Seeger Weiss has been engaged in this effort on virtually a daily basis since before the Effective Date with the assistance of Class Counsel, and Seeger Weiss and the other relevant parties, including some of Class Counsel, expect to continue to recruit and contract with additional physicians and providers going forward. These were daunting tasks, but they were successfully accomplished prior to the initial launch of the MAF Physician network and preliminary establishment of the BAP Provider network in June of 2017.

Working with the BAP Administrator, the Claims Administrator, the NFL Parties and its own experts, Seeger Weiss developed the services agreement that each physician and provider will

need to sign to serve in the networks. Through this same process, the settling parties prepared the manuals that are being and will be used by each of the Administrators to train the physicians and providers on the medical aspects of the Settlement, including the testing regimen at the heart of the BAP Program and what constitutes a Qualifying Diagnosis for purposes of qualifying for Monetary Awards.

Moreover, Seeger Weiss continually monitors and reviews these networks to make certain that Retired NFL Football Players are receiving the care and services that they deserve under the Settlement.

Oversight of the Claim Process and Monetary Award Determinations: With the Claims Process currently well into its second year, and hundreds of Monetary Award determinations already issued, Seeger Weiss dedicated hundreds of hours in actively monitoring and supporting the Claims Process to ensure that Class Members are receiving the benefits that were negotiated on their behalf. Seeger Weiss held regular calls with Class Counsel in this process to discuss implementation of the Settlement. This oversight included on-going reporting and requests for information from the Claims Administrator and reviewing every determination by a member of the AAP to ensure that the panel is correctly following the terms of the Settlement Agreement. When issues arose regarding the AAP's application of the Settlement Agreement, Seeger Weiss raised those issues with the Claims Administrator and the NFL. The settling parties then negotiated the language of a guidance memorandum to be sent to the AAP on that particular issue. Seeger Weiss' ongoing engagement with Class Members and their counsel provided further bases and guidance on the needs of the Claims Process.

Seeger Weiss is also supporting the petitions of Representative Claimants for Retired NFL Players who were diagnosed with a Qualifying Diagnosis, but died before January 1, 2006. For these claims to proceed to review on the merits, the Court needs to determine whether they are timely under the applicable state's law. Seeger Weiss has submitted many Statements in support of the Representative Claimants' submissions in those proceedings.

Additionally, as with any program of this magnitude and duration, a sophisticated audit program was negotiated and implemented. Seeger Weiss negotiated protections for the interests of Class Members in the rules and procedures governing the audit process, so as to make certain that meritorious claims are not unduly caught up with claims that are properly the subject of further examination by the Claims Administrator and, if warranted, the Special Masters. As part of these rules and procedures, Seeger Weiss monitors the progress of audit investigations and provides formal input as to each juncture in the process, including submissions to the Special Masters for those claims that are referred for decision.

Seeger Weiss has protected and will continue to protect the interests of Class Members by monitoring the wider operation of the Settlement Program and addressing, with the Claims Administrator, all types of issues as they arise.

Appeals of Claims Determinations: Seeger Weiss has, and will continue, to monitor all Monetary Award determinations to provide guidance to Class Members, assess whether Co-Lead Class Counsel should appeal any of the adverse determinations or, in those cases where an appeal from a determination is taken, either by a Class Member or the NFL Parties, to assess whether Co-Lead Class Counsel should file a Statement regarding the appeal. Through this active engagement, Seeger Weiss' goal is to make sure that Class Members' entitlement to benefits is not restricted or

foreclosed outright by parsimonious interpretations of the Settlement Agreement or by meritless appeals taken by the NFL. Whether through submitting Statements in support of a Class Member on appeal or through direct support of unrepresented Class Members and individual counsel, Seeger Weiss has pursued, among other things: a properly inclusive interpretation of the “generally consistent” standard underpinning diagnoses made outside of the BAP; appropriate deference to diagnosing physicians, particularly those in the BAP and MAF physician networks; curtailed use by the NFL of data related to other claims; assurance that NFL appeals are not taken in “bad faith” so that claims are improperly delayed; and making sure that evidence offered on appeal, such as social media postings offered by the NFL, is subjected to the scrutiny appropriate to unauthenticated hearsay. Indeed, the many appeals in which Seeger Weiss submitted a statement in support of a Retired NFL Football Player’s position and other submissions to the Special Masters concerning disputes about implementation of the Settlement ultimately culminated in the FAQs that issued in February of this year. (ECF No. 9137).

BAP Examinations and Supplemental Benefits: Development of the BAP network was only the first step in implementing the BAP benefits for eligible Retired NFL Football Players. Seeger Weiss is monitoring the implementation of the BAP so that examinations are promptly scheduled and all appropriate medical standards are followed for the Retired NFL Football Players. In coordination with the BAP Administrator, Seeger Weiss also worked toward the implementation of BAP Supplemental Benefits for those Retired NFL Football Players who are diagnosed with Level 1 Neurocognitive Impairment through their BAP examinations.

Fielding Calls from, and Supporting, Class Members and Lawyers Representing Class Members:

In addition to all of the above, Seeger Weiss has responded to hundreds of telephone calls each month from Class Members and lawyers representing Class Members. The calls involve virtually every conceivable issue concerning the Settlement. Of note, in the weeks leading up to the August 7, 2017 registration deadline, Seeger Weiss was deluged with telephone calls from Class Members (and even non-Class Members) and counsel representing Class Members with questions concerning the registration process. Seeger Weiss handled every call and was able to assist numerous Class Members in successfully registering under the Settlement. Seeger Weiss is providing the same level of support for Class Members through the Claims Process and any other aspect of the Settlement Program in which Class Members may be involved. Class Counsel also receive calls from Class Members' counsel and Class Members who are not represented by individual counsel.

Seeger Weiss also fielded calls from Class Members and their family members concerning the potentially misleading third-party solicitations and deceptive practices in the wake of the issuance of the Notice designed to clear up confusion disseminated in accordance with the Court's June 12, 2017 Order (ECF No. 7814), and the Court's Notice and Order of July 19, 2017 (ECF No. 8037), setting a September 19, 2017 hearing (ECF Nos. 8392-93, 8410) to address deceptive practices. Seeger Weiss expects that these calls will continue as the ongoing investigation develops.

Efforts to Protect Class Members from Third-Party Profiteers: Seeger Weiss began its investigation into misleading solicitations and improper practices in early 2017. As Co-Lead Class Counsel, Seeger Weiss was particularly concerned that profiteers might confuse or unduly

influence Class Members, who might be more susceptible to deceptive tactics by reason of neurocognitive impairments, other ailments, age, financial distress, or some combination of all of these factors.

Pursuant to the Court's July 19, 2017 Order, Seeger Weiss directed discovery at over three dozen separate groups of funders, claims services providers, certain Retired NFL Football Players, and even law firms. Seeger Weiss propounded written discovery requests, met and conferred with the respondents' counsel, received and reviewed documents and information, conducted depositions, and filed motions to compel against those persons and entities refusing to comply with the discovery requests. Most of these entities mounted spirited defenses against these efforts. Seeger Weiss presented its findings to the Court at the hearing held on September 19, 2017. ECF Nos. 8392, 8410. Additionally, Seeger Weiss created and provided to the Court a spreadsheet identifying all of the Class Members who will purportedly owe portions of their potential future Monetary Awards to one or more of these factions. ECF No. 8410, at 10, 13-14. Following the September 19th hearing, Seeger Weiss continued to seek discovery from additional entities whose identities became known, and continued to pursue motion practice against those third parties, including successfully opposing an attempted interlocutory appeal (ECF No. 8461; *see* ECF No. 8433) and moving for an order directing the Claims Administrator to withhold portions of future monetary awards allegedly owed to third parties until their entitlement to same could be determined (ECF Nos. 8470, 9113), which was vigorously opposed by numerous third parties (ECF Nos. 8825, 8910, 8932, 8933, 8939, 8940, 8941, 8942, 8943).

In particular, Seeger Weiss sought to challenge third-party funders' advances to Class Members against their anticipated Monetary Awards that seek to circumvent state usury laws by cleverly packaging the loans as assignments or partial assignments of the anticipated award (or

portion thereof). Seeger Weiss sought to participate as *amicus curiae* in an action in the Southern District of New York when it learned that agreements between Class Members and one of the third-party funders were the subject of that case and that the Settlement Agreement might be interpreted by another court. Alternatively, Seeger Weiss proposed that the district court presiding over that action refer the question of the putative assignments' validity to this Court for resolution (ECF No. 8197).

After the issue of these putative assignments was brought to the Court's attention, Seeger Weiss successfully argued that the putative assignments violate Section 30.1 of the Settlement Agreement (ECF Nos. 8434, 8457). In Orders entered on December 8, 2017 (ECF No. 9517) and February 20, 2018 (ECF No. 9749), the Court agreed with Seeger Weiss' position and, respectively, declared the putative assignment agreements void, as prohibited by the Settlement Agreement, and directed the manner in which the Claims Administrator was to handle the voiding of these assignment contracts. These Orders resulted in multiple third-party funders' appeals to the Third Circuit from these Orders (ECF Nos. 9558, 9755, 9794)²; motions to stay in this Court (ECF No. 9761) and in the Third Circuit; and a motion for a temporary restraining order and for a permanent injunction to prevent one funder from employing arbitration against the affected Class Member as an end-run around the Court's rulings, which resulted in the Court entering an Order enjoining the arbitration (ECF No. 10011), an Order that has also been appealed to the Third Circuit (ECF No. 10027).

Seeger Weiss has spent and will continue to focus significant, high-level attorney resources in briefing and arguing these motions and appeals. Meanwhile, in late 2017, Seeger Weiss learned

² These appeals are currently pending. Briefing in connection with the appeals taken by the RD Legal entities was recently completed. *See In Re NFL Players' Concussion*, Nos. 18-1040 & 18-1482 (3d Cir. reply brief filed June 7, 2018).

that one of the entities that had purported to enter into assignment agreements with Class Members had also encouraged Class Members to “invest” their retirement monies in that funder’s investment portfolio. Following the Court’s ruling that the assignments were void, a manager at that funder threatened a Class Member that the funder would engage in self-help and convert his and other Class Members’ retirement funds as a means of obtaining repayment of the monies advanced under the now-void assignments. This new, and very troubling development, has thus far required Seeger Weiss to engage in discovery (ECF Nos. 9750, 9778), two rounds of motion practice, and a hearing (ECF Nos. 9578, 9850, 9974, 10078) – and the matter will continue to command Seeger Weiss’ attention until it is resolved.

These efforts to protect Class Members will likely continue into the future for some time, as detailed herein, both in the investigative aspect, and, in the enforcement and/or effectuation of remedies that the Court has fashioned and may fashion in the future to protect Class Members from these profiteers.

KEYSTONE ACCOMPLISHMENTS ON BEHALF OF CLASS MEMBERS

The thousands of hours that Seeger Weiss along with Class Counsel dedicated to the aforementioned work were hours well invested for the benefit of the Class. Although the importance of the tasks discussed above is self-evident, a few of the key successes along the way make clear the value of the work of Seeger Weiss, among other firms, for the common benefit of the Class. These keystone successes include:

The Earlier Date for a Qualifying Diagnosis: The question of determining the date of a Qualifying Diagnosis had been an issue from the beginning of the claims process. The issue is significant

because, under the Settlement's compensation matrix, once a player reaches the age of 45, his potential Monetary Award decreases every year. Therefore, a difference of even one year in the date of the Qualifying Diagnosis can translate into a substantial decrease in the amount of a Monetary Award. The NFL's position was, and still is, that the earliest that the date of a Qualifying Diagnosis can be is the date that the diagnosing physician first personally examined the player. It was Seeger Weiss' position, however—as reflected in briefing for the Special Masters on the issue—that diagnosing physicians, based on their personal examination of the player, as well as a review of that player's existing medical records, may properly determine that the player began suffering from a Qualifying Diagnosis beginning on a date earlier than the initial personal examination by the diagnosing physician, and if so, that the use that earlier date as the date of the Qualifying Diagnosis is appropriate. The Special Masters accepted Seeger Weiss' position in the FAQs that they promulgated in early February 2018. Specifically, FAQ 93 allows physicians to use their “sound clinical medical judgment” to determine whether the player's diagnosed conditions “existed at a date earlier than the date of personal examination of the Player by the physician making the diagnosis and signing the DPC [Diagnosing Physician Certification (“DPC”) (i.e., medical certification)] form.”

MAF Physicians' Ability to Rely on Historic Neuropsychological Records: The NFL and Co-Lead Class Counsel had sharply differing views as to whether Qualified MAF Physicians could rely on historic neuropsychological testing when making a dementia diagnoses (Level 1.5 and Level 2), or whether they were required to send the player for new neuropsychological testing. This testing included earlier neuropsychological testing for one of the NFL benefit plans, such as the 88 Plan. The NFL's position was that a Qualified MAF Physician could rely only on

neuropsychological testing that was conducted at the direction of the Qualified MAF Physician. Seeger Weiss advocated through submissions before the Special Master for recognition of and respect for the medical judgment of the Qualified MAF Physicians and allowing them to rely on historic neuropsychological testing if they found it to be reliable, particularly when the testing was part of one of the NFL benefits plans. The Special Masters accepted this position and FAQ 102 now gives the Claims Administrator the discretion “to decide whether to accept neuropsychological testing from other sources based on the unique facts and circumstances of a particular claim,” so long as it is less than 12 months old. Similarly, FAQs 93 and 111 permit the use of earlier neuropsychological testing under the 88 Plan or another NFL benefit plan.

Accommodating the “Unavailability” of Diagnosing Physician or Medical Records: Under the Settlement Agreement, one of the few express exceptions to the requirement that the player submit a Diagnosing Physician Certification from the Diagnosing Physician is if the Diagnosing Physician died, or was declared incompetent or legally incapacitated, before the Effective Date. Similarly, the only exception to the requirement that the player submit medical records reflecting the claimed diagnosis was if the records were destroyed or lost by reason of a *force majeure* type event. For every claim that fit easily into these exceptions, there were some where the Diagnosing Physician is still alive and competent but unavailable as a practical matter, or where medical records are no longer available due to a variety of reasons, including routine destruction of older records. These claims were vulnerable to denial under the terms of the Settlement Agreement. Seeger Weiss was initially able to secure the NFL’s consent to look at such circumstances on a case-by-case basis rather than categorically rejecting claims affected by them, and Seeger Weiss dedicated many hours to reviewing each Claim Package and negotiating with the NFL. In some of these claims,

Seeger Weiss had disputes with the NFL that were irreconcilable – either because of the burden placed on the Class Member by the only accommodation that the NFL was willing to offer, or because of the NFL’s refusal to offer an accommodation. The Special Masters ultimately took up this issue and, in FAQ 115, gave the Claims Administrator the discretion to decide whether the Diagnosing Physician Certification and medical records requirements should be excused in particular cases.

Providing for the Downgrading of Qualifying Diagnoses to Speed Awards: Early in the claims process, Seeger Weiss realized that there would be situations in which a player’s claim may be denied with respect to the asserted Qualifying Diagnosis, but that there was sufficient evidence in the Claim Package to support a different Qualifying Diagnosis. For example, a player submits a claim for Level 2 Neurocognitive Impairment (moderate dementia) but the evidence supports only a Level 1.5 Neurocognitive Impairment (early dementia). Under the Settlement Agreement, that claim would be subject to denial and the player would either need to file an appeal, or a *de novo* claim for a Monetary Award based on an asserted Level 1.5 Neurocognitive Impairment.

Accordingly, in an effort to streamline the process and avoid needless appeals and re-applications, Co-Lead Class Counsel proposed that the AAP should have the ability to approve a claim for a lesser Qualifying Diagnosis or for the asserted Qualifying Diagnosis but with a later diagnosis date. After much negotiation, the NFL agreed, in part, to “downgrading,” but only in very limited circumstances. As a result, Seeger Weiss raised the issue with the Special Masters, who agreed and promulgated FAQ 137, giving the AAP the discretion to “downgrade” claims without restriction.

The Definition of “Eligible Season” and the Full 53-Man Active List: At the heart of the Settlement benefits is the “Eligible Season,” which stands as a proxy for exposure to concussive and sub-concussive hits. The number of Eligible Seasons is thus a key driver in the amount of a Monetary Award and drives a Retired NFL Football Player’s eligibility for participation in the BAP. A full Eligible Season is earned for each year that a Retired NFL Football Player was on the Active List for at least three games. The NFL, however, took the rigid position that uninjured players who were listed as “inactive” on game day would earn nothing toward an Eligible Season, even though they were shoulder-to-shoulder in practice during the prior week with all of the other Active List players. As the Court is aware, Seeger Weiss, alongside attorney Brad Sohn,³ advocated for parity in treatment of all Retired Players on the Active List up to game day. After Seeger Weiss prevailed on behalf of the Class Members before the Special Master (ECF No. 9713), the NFL filed objections to the Special Master’s Ruling in this Court (ECF No. 9754-1). The Court overruled that objection, making the final and binding determination that the more reasonable (and expansive) definition of “Active List” should apply (ECF No. 9754). This victory has already resulted in a substantial increase in at least one Monetary Award and has increased the number of players eligible for the BAP.

³ Although Mr. Sohn was representing his individual client in the appeal and subsequent briefing before the Court relating to the definition of “Eligible Seasons,” Seeger Weiss solicited his collaboration and engagement for the common benefit of the Class. Accordingly, Seeger Weiss is including Mr. Sohn’s time on the issue of Eligible Season with this Fee Petition in order to compensate him for that work because it conferred a common benefit on the Class.

SUMMARY OF HOURS & LODESTAR AND EXPENSES INCURRED

Seeger Weiss collected and reviewed common benefit time and expenses submitted from Class Counsel and attorney Brad Sohn. It reviewed all of the time entries and expenses submitted, and re-reviewed its own, in order to exercise billing judgment as to both the reasonableness of the submissions and whether the work performed and expenses incurred genuinely relate to the Settlement's implementation. After conducting this review (and re-review), Seeger Weiss circulated the adjusted lodestar to each firm one week prior to the instant filing for an opportunity to comment and reach agreement. Based on its thorough review, and in light of the work that this time represents, Seeger Weiss requests a fee award of \$8,559,179.97 based on the blended rates established by the Court, and \$926,244.04 for reimbursement of expenses, to be allocated as follows⁴:

Firm	Total Hours	Blended Rate Lodestar⁵	Expenses	Total Award Requested
<i>Anapol Weiss</i>	137.7	\$104,424.80	\$161,310.17	\$265,734.97
<i>Brad Sohn Law Firm</i>	38.4	\$29,120.64		\$29,120.64
<i>Levin Sedran & Berman</i>	73.3	\$55,587.05	\$406.87	\$55,933.92

⁴ As with the common benefit fee petition filed in February 2017 (ECF No. 7151; *see* ECF No. 9860, at 15), Co-Lead Class Counsel and Class Counsel stand ready to submit their supporting time records to the Court for its *in camera* review.

⁵ As directed by the Court, the lodestar sought utilizes the blended rate used in the May 24, 2018 Allocation Order. Accordingly, the billing rate for partners is \$758.35. The billing rate for "of counsel" attorneys is \$692.50. The billing rate for associates is \$486.67. The billing rate for contract attorneys is \$537.50. The billing rate for paralegals is \$260.00. *See* ECF No. 10019, at 7 n.4. Attached hereto as Exhibit "A" is a chart setting forth the above totals and breaking down each firm's the common benefit hours by professional rank.

<i>Locks Law Firm</i>	670	\$508,094.50		\$508,094.50
<i>NastLaw</i>	80.1	\$49,251.77	\$1,422.74	\$50,674.51
<i>Podhurst Orseck</i>	287.6	\$173,313.42	\$18,062.98	\$191,376.40
<i>Prof. Issacharoff</i>	36.3	\$27,528.10		\$27,528.10
<i>Seeger Weiss</i>	12,2230.1	\$7,611,859.69	\$745,041.28	\$8,356,900.97

CONCLUSION

WHEREFORE, the undersigned, as Co-Lead Class Counsel, respectfully requests that the Court approve this First Petition for Post-Effective Date Attorneys' Fees and Costs and award \$9,485,424.01. which reflects \$8,559,179.97 in lodestar based on the blended rates established by the Court and \$926,244.04 in expenses, to be paid from the Attorneys' Fees Qualified Settlement Fund, and allocated as set forth in the above table.

Date: July 10, 2018

Respectfully submitted,

/s/ Christopher A. Seeger

Christopher A. Seeger
 SEEGER WEISS LLP
 55 Challenger Road, 6th Floor
 Ridgefield Park, NJ 07660
 cseeger@seegerweiss.com
 Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

VERIFICATION

CHRISTOPHER A. SEEGER declares, under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746, that he is the Petitioner in this matter, has read the foregoing First Verified Petition of Co-Lead Class Counsel Christopher A. Seeger for an Award of Post-Effective Date Common Benefit Attorneys' Fees and Costs, and knows the contents thereof, and that the same are true to his personal knowledge, information, and belief.

Executed this 10th day of July, 2018.

/s/ Christopher A. Seeger
CHRISTOPHER A. SEEGER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on July 10, 2018

/s/ Christopher A. Seeger
Christopher A. Seeger